

**Pinter Bros., Inc., Retnip Corp., Pin-Bro Leasing, Inc., GLT Transportation Corp., and Troiano Express Co., Inc. and Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Amalgamated Workers Union, Local 88, Retail, Wholesale and Department Store Union, AFL-CIO, Party to the Contract. Cases 29-CA-6786, 29-CA-6827, and 29-CA-6828**

August 26, 1982

### DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND  
MEMBERS FANNING AND ZIMMERMAN

On February 12, 1982, Administrative Law Judge Joel P. Biblowitz issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Charging Party filed exceptions and a supporting brief, and Respondent filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondent GLT Transportation Lines, Inc., a/k/a Moon Transportation Corp., Jersey City, New Jersey, shall take the action set forth in the said recommended Order.

IT IS FURTHER ORDERED that the complaint regarding Respondents Pinter Bros., Inc., Troiano Express Co., Inc., and Retnip Corp., Deer Park, New York, be, and it hereby is, dismissed in its entirety.

<sup>1</sup> The Charging Party has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

### DECISION

#### STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge: This case was heard before me in Brooklyn, New York. The hearing opened on October 6, 1980; there were 23 days of hearing; the hearing closed on February 26, 1981.

#### Chronology of Charges, Complaints, and Decisions

There have been a number of prior matters involving Pinter Bros., Inc., herein called Pinter, and Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 807. On January 12 and November 17, 1977, the Board issued Decisions in 227 NLRB 921 and 233 NLRB 575 in which it found that Pinter violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, herein called the Act, by, *inter alia*, discriminating against a number of its clerical employees due to their activities on behalf of Local 807 (these cases involved only Pinter's clerical employees). The unfair labor practice charges in the instant matter (Cases 29-CA-6786, 29-CA-6827, and 29-CA-6828) were filed on November 9, 1978, and December 1, 1978, and involve Pinter's operational employees (drivers, warehousemen, etc.). A consolidated complaint and notice of hearing based on these charges issued on April 30, 1979. On August 27, 1979, a backpay specification and notice of hearing issued, based upon the aforementioned decisions of the Board involving Pinter's clerical employees. On July 16, 1980, the Regional Director issued an order consolidating and rescheduling hearing in which he consolidated the consolidated complaint which issued on April 30, 1979, with the backpay specification which issued August 27, 1979. On the final day of the hearing herein, and prior to the introduction of any evidence on the backpay issue, the parties agreed to a settlement of the backpay specification. Pursuant to that understanding, after the close of the hearing, and after he had received checks from Pinter for each of the discriminatees (in an amount satisfactory to them), the General Counsel moved to amend the backpay specification to amend the amounts to conform to the amount received for each discriminatee, and to allege the backpay period to run only through May 2, 1977, reserving his rights regarding the liability of Respondents for the period after May 2, 1977; the General Counsel also moved to sever this amended backpay specification from Cases 29-CA-6786, 29-CA-6827, and 29-CA-6828. On May 6, 1981, I issued an order approving amendment, severance, and settlement of backpay specification; therefore, the hearing only concerned the allegations contained in the consolidated complaint of the three above-mentioned charges. The remaining issue, stated rather simply, is as follows: Is Retnip Corp., herein called Retnip, Pin-Bro Leasing, Inc., herein called Pin-Bro, GLT Transportation Lines, Inc. a/k/a Moon Transportation, Inc., herein called GLT Transportation, or Troiano Express Co., Inc., herein called Troiano, or are all or some of said companies, *alter egos* or successors to the operation of Pinter, and therefore liable to assume the obligations and responsibilities of

Pinter when it allegedly ceased its trucking operations on May 2, 1977?

#### Brief Chronology of Facts

Local 807 has represented Pinter's drivers, platform men, and warehousemen since about 1950. The chronology of facts set forth:

1975—The events involving Pinter's clerical employees that were the subject of the Board's above-mentioned Decisions and the backpay specification later settled and severed.

April 1, 1976—The Teamsters national agreement expires; Pinter's employees (as well as the employees of most employers whose employees are represented by the Teamsters Union) go out on strike.

April 6, 1976—Pinter and Local 807 agree that the employees will return to work for 10 days while they attempt to negotiate a settlement of the dispute.

April 17, 1976—the employees of Pinter resume their work stoppage.

September 24, 1976—Tentative settlement of dispute that fails when Pinter's employees fail to ratify the settlement.

December 6, 1976—The dispute is settled and Pinter returns to its trucking operation in a limited manner, compared to its operation prior to April 1, 1976.

May 2, 1977—Pinter informs Local 807 that it is out of the trucking business.

November 1977—Robert Pinter and Joseph Pinter, Jr., begin running a trucking operation as the Long Island operation for GLT Transportation.

April 1978—Robert Pinter and Joseph Pinter, Jr., cease operating in connection with GLT Transportation and begin operating as Troiano, later purchasing all the stock of Troiano.

#### FINDINGS OF FACT

##### 1. JURISDICTION

Pinter Bros., Inc., is a New York State corporation with its principal office and place of business at Carll's Path in Deer Park, Long Island, New York. At this location, herein called the Deer Park terminal, there is a 90,000-square-foot warehouse, which is attached to a truck terminal containing 77 "doors" (the area in which the trucks back into, in order to load or unload). In a separate, unattached building is a maintenance building. Prior to March 31, 1976, Pinter was engaged in an interstate and intrastate trucking operation and was found in the previously mentioned Board Decisions to be an employer engaged in commerce within the meaning of the Act. On May 2, 1977, Pinter ceased its trucking operation. At the hearing the parties stipulated that Pinter, during the year 1978, which period is representative of its annual operations, at the time, had gross revenues in excess of \$100,000 derived from leasing and related services, and received income in excess of \$50,000 by providing such services to trucking firms that themselves are directly engaged in interstate commerce.

Troiano Express Co., Inc., a New York State corporation with its principal office and place of business at the

Deer Park terminal, is engaged in interstate and intrastate trucking operations and has been so engaged at all material times herein, except for the period from April 1, 1976, to on or about April 15, 1978. During the year previous to April 1979, which period is representative of its annual operations generally, Troiano had gross revenues from its trucking operation in excess of \$500,000, and it received revenues in excess of \$50,000 for services performed outside the State of New York. The parties admit, and I find, that Pinter and Troiano are each employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At the hearing the consolidated complaint was amended to include Retnip. The amendment, as granted and admitted, is that Retnip Corp. is a New York State corporation, with its principal office at the Deer Park terminal, and is engaged in the leasing of trucks and other related services under the trade name and style of Pinter Leasing. In 1979, Retnip purchased the trucks and other vehicles of Pinter Brothers, Inc., and since said date has continued to operate the truck leasing business formerly operated by Pinter Bros., Inc. Counsel for Retnip and Pinter, although admitting the above facts, denies the allegation that Retnip is a successor or *alter ego* of Pinter. On the basis of the above I find that Retnip is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

GLT Transportation Lines, Inc., a/k/a Moon Transportation Corp., is a New Jersey corporation with its principal office and place of business at 271 Culver Avenue, Jersey City, New Jersey, and, at least for the period from November 3, 1977, through April 3, 1978, maintained an office and place of business at the Deer Park terminal. This much was established at the hearing. The complaint also alleges that, for the prior year, GLT Transportation had gross revenues in excess of \$500,000 and received revenues in excess of \$50,000 for services performed outside the State of New York. The evidence adduced herein on the subject is that for the year 1977 GLT Transportation had gross revenues of approximately \$3 million, and, of this, approximately \$1.5 million was generated in New York State. I would, therefore, find that GLT Transportation, at the time in question, was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.<sup>1</sup>

The complaint also sets forth the jurisdictional allegations regarding Pin-Bro. It alleges that Pin-Bro is a New York State corporation, and this much is admitted. It also alleges that Pin-Bro maintains its principal office at the Deer Park terminal where it is engaged in intrastate and interstate trucking operations, and during the year prior to the issuance of the complaint its gross revenue from trucking services was in excess of \$500,000, of which in excess of \$50,000 was for services performed outside the State of New York. These allegations are generally denied by Pin-Bro and the other Respondents. On the basis of the record testimony, I find that Pin-Bro has maintained its principal office and place of business

<sup>1</sup> GLT Transportation failed to file an answer to the consolidated complaint herein and failed to appear at the hearing. Summary judgment was granted as to it.

at the Deer Park terminal, but that it was not engaged in intrastate and interstate trucking operations; rather it was a corporation set up by Robert Pinter, herein called Robert, and Joseph Pinter, Jr., herein called Joe, Jr., to purchase, and hold title to, trucks and tractors they purchased at the Pinter auction on January 25, 1978, and thereafter. Although both Pin-Bro and Troiano are owned 50-50 by Robert and Joe, Jr., Pin-Bro owns the tractors and trucks while Troiano is engaged in the trucking operation. I therefore find that the General Counsel has failed to establish that Pin-Bro is an employer engaged in commerce within the meaning of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

Respondents admit, and I find, that Local 807 and Amalgamated Workers Union, Local 88, Retail, Wholesale and Department Store Union, AFL-CIO, herein called Local 88, are each labor organizations within the meaning of Section 2(5) of the Act.

## III. THE PINTER FAMILY AND THE PINTER COMPANIES

The patriarch of the family is clearly Joseph Pinter, Sr., herein called Joe Sr. He started Pinter in or about 1930 and is presently 74 years old; his wife Marguerite Pinter is 70 years old. They have five children; three of them—Robert, Joe Jr., and Franklin Pinter, herein called Franklin, aged 45, 44, and 30, respectively—have actively been involved in Pinter operations, and two—Marguerite Pinter Matson and John Pinter, herein called John, aged 40 and 36, respectively—have not been actively involved in Pinter operations, except for equal ownership in the family companies with the other children. Joe Sr., and his wife, Marguerite, together own 260 shares of stock of Pinter; each of the five children own 48 shares; those are the only Pinter shares outstanding. In May 1975, the officers of Pinter were Robert—president; Joe Jr.—vice president; Charles Brown—secretary; and Joe Sr. and his wife—chairman of the board and treasurer. After Robert and Joe Jr. resigned in November 1977, Franklin became president, while there was no vice president; Brown, Joe, Sr., and Marguerite maintained their former positions. Pinter has Interstate Commerce Commission (herein called ICC) rights to pick up and deliver to all of New York City and Long Island parts of New Jersey, Westchester, and New York State; these rights have not been used since May 1977. Prior to the April 1, 1976, strike it employed approximately 80 drivers, 35 platform men and had approximately 225 pieces of rolling stock consisting of tractors, trailers, and trucks. Since the strike, Pinter has been engaged in vehicle maintenance and the sale of tires to the public. Until 1979 Pinter was also engaged in the leasing of its rolling stock to the public. As stated, *supra*, in 1979 Retnip purchased this equipment and assumed this operation.

Pinter Warehouse, Inc., herein called Pinter Warehouse, is also a New York State corporation with its office at the Deer Park terminal. It was incorporated in or about 1966, presumably at the completion of construction of the Deer Park terminal. Each of the five Pinter children own a 20-percent interest in Pinter Warehouse;

the only officer who was identified at the hearing was Franklin, as its president. It is engaged in the business of a public general warehouse, only in the 90,000-square-foot warehouse at the Deer Park terminal. It moves goods out of the warehouse with "Pros" serving the function of invoices, with the "Pinter Bros., Inc.," caption. Prior to the summer of 1980, Pinter Warehouse leased the warehouse at the Deer Park terminal from Pinter Realty, Inc., herein called Pinter Realty; since that time, Pinter Warehouse has leased the warehouse from Cotton Realty, which purchased it at that time, *infra*. Pinter Warehouse has made dividend payments to its shareholders since its inception, and is the only one of the family companies to have done so. Accordingly, Joe Jr. and Robert have received dividend checks from Pinter Warehouse since November 1977, as have the other children. Joe Jr. and Robert have not been on any family company payroll since that time, however.

Prior to the summer of 1980, Joe Sr. and his wife Marguerite owned title to the real estate at the Deer Park terminal. Pinter Realty, whose stock was owned entirely by Joe Sr. (and whose president was Franklin from November 1977 until it was liquidated in the summer of 1980), owned the buildings on the property and had a long-term lease from Joe Sr. and Marguerite on the property. In the summer of 1980, Joe Sr. and Marguerite sold their title in the real estate of the Deer Park terminal to Cotton Realty, herein called Cotton, a New York licensed equal partnership of all five Pinter children. As part of this transaction, Pinter Realty sold to Cotton its title to the buildings at the Deer Park terminal. The total price for the land and buildings was \$2.3 million, represented by a 30-year money mortgage. Since that time Pinter Warehouse has been leasing the warehouse from Cotton.

Since the strike in April 1976, Pinter has been engaged in leasing its tractor and trailers to the public, beginning with a leasing arrangement with the United States Postal Service. Franklin testified that this practice continued until late in 1978 when they were informed by a representative of ICC that, as a common carrier with ICC rights, the Company should not be so ostensibly involved in leasing its equipment to the general public. Pursuant to this advice Retnip was formed in December 1978. It is owned equally by the five children; John is the president and Franklin the vice president. The actual day-to-day operation of Retnip is run by Charles Brown, its general manager. Retnip now owns about 200 pieces of rolling stock, tractors, straight trucks, trailers, and semitrailers; about 60 percent of this rolling stock was purchased from Pinter; Pinter's rolling stock was sold to Retnip on December 8, 1978, for net book value; the five children (i.e., Retnip) paid \$30,000 to Pinter for this equipment with the balance to be paid to Pinter at the rate of \$5,000 a month until it was paid off; there was no interest charge on the balance. Retnip operates under the title of Pinter Leasing.

Since at least November 12, 1976, Robert and Joe Jr. had the authority to sign checks for Pinter. On November 1, 1977, they resigned their offices and directorships in Pinter, effective immediately. It was not until January

4, 1978, however, that a new corporate resolution was instituted for Pinter, giving Franklin, Joe Sr., and his wife Marguerite the authority to sign checks on behalf of Pinter. There was no formal revocation of Robert and Joe Jr.'s power to sign checks for Pinter prior to January 4, 1978, but there is no evidence that they did so during this period, or thereafter.

As stated, *supra*, beginning in or about November 1977, Robert and Joe Jr. began operating the Long Island operation of GLT Transportation, although they had no ownership interest in the company. When this proved to be an unsatisfactory arrangement they began operating as Troiano on or about April 15, 1978. Troiano previously operated in the same area as Pinter, but on a smaller scale. After the Teamsters struck on April 1, 1976, Troiano never reopened. From about April 15, 1978, through November 15, 1978, Robert and Joe Jr. operated under the Troiano name and ICC rights. On November 15, 1978, Robert and Joe Jr. purchased all the capital stock of Troiano for \$100,000; they each own half of the stock; Joe Jr. is president, his wife Mary Jane Pinter is secretary-treasurer, and Robert is vice president. No other Pinter has any financial or management interest in Troiano. As stated, *supra*, Robert and Joe Jr. established Pin-Bro as a corporation to hold title to its tractors and trucks (it owns no trailers). A major part of its acquisition took place at an auction of Pinter rolling stock on January 25, 1978. Pin-Bro stock is owned one half by Robert and one half by Joe Jr.; they are president and vice president (although they were not sure which was which) and Mary Jane Pinter is secretary-treasurer of Pin-Bro.

Pinter family members can sell their stock in Pinter, Retnip, and Pinter Warehouse, but the other family members must be given the rights of first refusal.

#### IV. CREDIBILITY

The record herein is rather voluminous; one reason for this is the large amount of "background" testimony that I allowed due to the intricate nature of the allegations. A lot of this testimony goes strictly to credibility and I will therefore precede the discussion of the facts herein with my credibility determinations in order to cull from the facts testimony that I found not to be credible.

One witness who spent 3 entire days on the witness stand was Sam Moallem, who was generally known as Sam Mor, herein called Mor. Mor has two connections with the allegations herein: On May 8, 1976, at a time when he had no prior business relationships with any member of the Pinter family, he and some of the drivers employed by him went to the Deer Park terminal (by prior arrangement with members of the Pinter family) during the strike to remove four Pinter trailers to his own terminal with the hope of delivering this merchandise to the customers involved; Pinter had earlier picked up the merchandise in these trailers. Additionally, as stated *supra*, from on or about November 1, 1977, through April 15, 1978, Robert and Joe Jr. operated the Long Island terminal for GLT Transportation; during this period, Mor, apparently, was the owner of GLT Transportation.

There was an extensive amount of testimony regarding Mor's business dealings, before, during, and after the period of Robert and Joe Jr.'s involvement with GLT Transportation. Suffice it to say that his manner of operating a business could be described as less than savory; one practically needed a program in order to keep track of all the companies he had been involved with during the 4-year period from about 1974 through 1978. There appeared to be a pattern where these companies changed their name, changed the union representing its employees, and/or became insolvent. Furthermore, Mor was an uncooperative and evasive witness; he appeared to have a flippant and cavalier attitude toward testifying; for example, on approximately 40 occasions his answer was simply: "could be." Additionally, numerous portions of his testimony were plainly incredible; a few examples follow.

Two associates of Mor in GLT Transportation and other companies were Edad Ben Ary, herein called Ary, and Eli Eshel. In or about June 1977, GLT Funding Corp., herein called GLT Funding, was formed; it was owned one half by Joseph Ofek and one half by Menashe Yaron. It was set up for the specific purpose of factoring GLT Transportation's receivables, and almost immediately entered into a factoring agreement with GLT Transportation under which it (GLT Funding) advanced moneys to GLT Transportation against its receivables. Under this agreement GLT Transportation submitted its invoices to GLT Funding, which then advanced the funds based on these invoices; the customers were to pay directly to GLT Funding, and a notice to this effect was stamped on the invoices. Ofek eventually became aware that a number of invoices that GLT Funding had financed and involved a substantial amount of money had been paid directly to GLT Transportation, although Mor and his associates never informed Ofek of it. The natural question was why Ofek kept advancing them funds when he knew they were cheating him. Ofek testified: "Later on, as their need for money grew, we could not in a good business judgment choke them from getting their cash flow that was needed."

The situation between GLT Transportation and GLT Funding worsened in November 1977 when Robert and Joe Jr. began operating in Long Island for GLT Transportation. Mor's agreement with Robert and Joe Jr. was that they would bill and collect on the business they generated (with regular accountings as to who owed whom what), yet Mor submitted the GLT Transportation bills generated by Robert and Joe Jr. to GLT Funding and received advances on these invoices as well. Ofek testified that he did not learn of this until May 1978, 6 months after this Long Island operation began; Mor testified that he did not tell Ofek or Yaron about the Long Island operation; this is difficult to credit as Yaron was stationed on a daily basis at the GLT Transportation terminal in Jersey City to facilitate the approval of invoices for advances and Robert appeared at this terminal on a regular basis during the November 1977 through March 1978 period; it is implausible that Ofek did not learn of Robert and Joe Jr.'s operations until May 1978. Additionally, Ofek testified that by September or October

1977 he "knew that certain things were happening, not to our liking. . . ." At the time, GLT Transportation owed him about \$300,000. And yet he testified that he never demanded that GLT Transportation's books be audited; he merely requested that an accountant review their books which Mor refused; Ofcek demanded nothing further and continued to advance them money. Ofcek further testified that in early May 1978 GLT Transportation moved out of its Jersey City terminal, and all trucks, equipment, key personnel, and customers were transferred to Moon Carrier; Ofcek testified that, at the time, he had been advancing GLT Transportation more than what was shown on their invoices in order to keep them liquid, and that GLT Transportation then owed him about \$350,000. Mor never informed him of this change prior to its occurrence and it was in direct violation of GLT Funding's agreement with GLT Transportation. Yet Ofcek testified that, even after this, he continued to advance funds to GLT Transportation.

Ofcek testified that about 2 months later he and four relatives and acquaintances invested in certain joint ventures involving oil and gas leases with Mor, who had a 25-percent interest in these joint ventures. He testified further that in 1979, when he and his relatives became dissatisfied with this venture (it would have required the investment of additional capital), they sold their interest in the joint ventures to Mor for the amount of their investment, about \$650,000. The transaction took the form of a note and a contract with liens recorded on the lease. Although Ofcek testified that Mor repaid approximately \$200,000 of this debt, I find it incredible that, after his experiences with Mor at GLT Funding, a month later he would enter a joint venture with Mor, and a year later he would sell this interest in the joint venture to Mor for what he paid for it, with nothing more secure than Mor's note and a recorded lien on the lease itself.

Further testimony of Ofcek that is inconceivable to me is that with the two settlements of his lawsuits against GLT Transportation and Mor's other companies having fallen through, Ofcek has not exercised his right to proceed on Mor's personal guarantee of this debt. Mor testified that at the time of the hearing he owed Ofcek \$500,000—"not a lot of money."

Mor testified that, while he was involved with GLT Transportation, he gave Eshel authority to sign checks "to make him feel good." Eshel wrote \$200,000 in checks; Mor does not know what he did with this money. (Mor testified: "I didn't say he stole, he took.") Mor never sued Eshel for this amount although he later learned that he was charged by the United States Government with embezzlement.

There are two additional reasons why I would discredit Mor's testimony; on numerous occasions he testified that he arrived at the Deer Park terminal on May 8, 1976, about 8 or 9: "We met not before 8:00 a.m." Robert places the time of Mor's arrival on that day as 3 a.m. Received in evidence was a police department, county of Suffolk, offense report reciting, *inter alia*, a complaint by Mor, that "while he was operating a tractor for Pinter Brothers at the above location [Deer Park] . . ." shots were fired at his tractor. The time of this incident as stated in this report was 4:15 a.m. Although the

exact time of Mor's arrival on that day is not particularly relevant or determinative of anything in this matter (except general credibility), it is a matter he should remember (even though it took place 4 years before the hearing herein) as he was shot at and was a complainant in the police matter. The fact that his testimony was incorrect on this matter further convinces me that he was either purposely not telling the truth, or was so disinterested in the proceedings that he made no attempt to tell the truth. Finally, Mor testified that in 1976 he made illegal payments to the president of the union which represented the employees of the companies he owned at the time in order to be relieved of the labor agreement and some required pension and welfare fund payments he owed to the union. Mor testified at the trial of this union president and himself pleaded guilty to making illegal payments to a labor representative. He was sentenced to 6 months in prison and is under the Federal Witness Protection Program.

Based on all of the above, I would generally discredit the testimony of both Mor and Ofcek. The above-recited testimony simply convinces me that their testimony is too improbable to be reliable herein. In the interest of brevity and relevance, much of their testimony will not be discussed herein, even when not contradicted.

I also found Robert Pinter to be a not entirely credible witness. In his Decision in 227 NLRB 921, Administrative Law Judge Bernard Ries found Robert Pinter to be somewhat less than credible. I agree. He was evasive in his answers to counsel for the General Counsel and counsel for the Charging Party, whereas his memory was greatly improved in answering questions of his counsel and counsel for Pinter. Additionally, he testified that in his discussions with Mor he does not remember if they discussed whether GLT Transportation had a collective-bargaining agreement in effect. I find this highly unlikely. Prior to the termination of trucking operations by Pinter, Robert was the member of the Pinter family with the most contacts with Local 807 in Pinter's day-to-day operations. When Pinter terminated its trucking operations, Joe Sr. at least partially blamed Local 807 for his decision to terminate the operation. It appears improbable to me that 5 months later when Bob was entering into his own trucking operation he would not ask Mor whether his employees were represented by any union.

I found Joseph Pinter, Jr., to be a more credible witness than Robert Pinter; his testimony was not as extensive as that of his brother, and neither was he as evasive as his brother. Additionally, I found Franklin Pinter to be a highly credible witness; he was equally responsive to questions from all counsel, and appeared to be answering questions in a frank and honest manner. The credibility of the other witnesses will be discussed, *infra*, where necessary.

## V. THE FACTS

The bottom line issue herein is simply stated: Did the operation of Robert and Joe Jr. as GLT Transportation between November 1977 and April 1978 and their operation of Troiano after April 1978 (at the time that it was

owned and/or operated by Robert and Joe Jr.) constitute a successor or *alter ego* to Pinter as it was operated prior to May 1977. Admittedly, Pinter ceased operating its own trucking operation on May 2, 1977, although both before and after that date it leased tractors and trailers (since 1979 through Retnip), leased doors of the Deer Park terminal, and continued to lease space in its warehouse (through Pinter Warehouse). The General Counsel and counsel for the Charging Party have attempted to establish enough of a connection of operation and favoritism between Robert and Joe Jr.'s Troiano operation and these Pinter family companies to establish the successor or *alter ego* allegation.

As stated, *supra*, during the hearing I took a "better safe than sorry" attitude toward the relevancy of testimony because of the intricate and complicated nature of the issue involved. Upon a review of the entire record, it is clear that much of the testimony has no relevance to the issues involved. For the sake of brevity, therefore, much of the testimony will not be discussed herein.

#### A. Pre-May 2, 1977, Events

As stated, *supra*, Local 807 has long represented Pinter's drivers, platform men, and warehousemen. Prior to 1976 Pinter was a member of Trucking Employers, Inc., herein called TEI, an association of employers in the trucking industry. In the past, therefore, Pinter had executed the National Master Freight Agreement, herein called the national agreement, as well as the New Jersey-New York General Trucking Supplemental Agreement, herein called the local agreement. On January 28, 1976, Robert Pinter wrote to both TEI and Local 807 informing them that Pinter would no longer be associated with TEI, but would negotiate with Local 807 on its own; the General Counsel admits that this withdrawal was proper.

On March 26 and 31, 1976, there were negotiating sessions attended by representatives of Local 807 and employers in the area, including Pinter (by Robert), Troiano, Bilkay's Express, herein called Bilkay's, and John J. Jungerman, Inc., herein called Jungerman. Between these negotiating sessions, on March 27, 1976, a meeting of the membership of Local 807 voted to reject the national agreement proposed by the TEI. At the end of the general meetings, Local 807 President Mangan informed the employees of Pinter, Troiano, Bilkay's, and Jungerman that their employers wished to bargain separately from the TEI; these employees informed Mangan that they wished to be covered by the same agreement as the other members of Local 807.

No agreement was reached at the meetings of March 26 and 31, 1976; the existing agreements expired on March 31, 1976; representatives of Local 807 asked the employer's representatives if they would agree to retroactivity of any agreement later reached,<sup>2</sup> and were

<sup>2</sup> There was extensive testimony regarding whether Local 807's request for an agreement on retroactivity at these meetings referred to the national agreement or any agreement later arrived at between Local 807 and Pinter, Troiano, Bilkay's, and Jungerman. After reviewing the entire record, I am of the opinion that this is irrelevant to the ultimate issue herein and this issue will therefore not be discussed.

There was also extensive testimony (mostly elicited by Pinter) attempting to establish that Local 807 was attempting to bind Pinter to the national agreement although Pinter had lawfully withdrawn from the TEI.

told that, if they did so agree, their men would continue working. Both Pinter and Troiano refused. At the conclusion of the meeting of March 31, 1976, Robert returned to the Deer Park terminal where he posted notices to inform the driver's and other employees of a meeting at which he would inform them of the progress of the negotiations. The meeting was held in the driver's lunchroom at the Deer Park terminal at or about 8 o'clock that evening. Robert was the only Pinter present. Ted Spera, the shop steward at Pinter, was the only Local 807 representative present. The meeting was attended by 75 to 80 employees. Frank Carney,<sup>3</sup> who had been employed by Pinter as a platform man, warehouseman, and driver for almost 20 years, testified about this meeting as did Spera and Robert; Carney testified that Robert began the meeting by saying that Pinter had sent a letter to Local 807 to negotiate separately because Pinter could not operate under the National Agreement, but that he had received no response from Local 807; he also said that Pinter needed relief from Local 807 especially in two areas—flexible starting time<sup>4</sup> and Saturday work at regular time. One of the employees, Bob Satter, then asked him what would occur if he could not have his way in the negotiations; Robert answered that he would close down for 60 to 90 days and reopen with another union. Satter then asked what would happen to his health and welfare pension, and Robert said that if he had it for over 10 years it would be frozen; if he had it less than 10 years he would lose it. Carney then said that "after all these years of what we've done for the company . . . that you would just put us out in the street," and Robert answered: "Yes, that's the name of the game. We're here to make money." Spera<sup>5</sup> testified that Robert began the meeting by saying that Local 807 was trying to force the national agreement onto Pinter, but he wanted no part of it; that he needed relief in the form of staggered starting time and a flexible workweek. Satter asked Robert "what if you don't get what you want from Local 807," Robert said that he would have to close down<sup>6</sup> for 60 to 90 days and come back with another union; Satter asked about his pension and Robert said that he had nothing to worry about if he had 10 years with Local 807: If he did not have 10 years, he would have to find another job with Local 807 in order to "carry it over." Carney then asked, "But what happens with all the service that the men gave you through-

As there is no 8(b)(3) violation alleged herein, this will also not be discussed. Suffice it to say, however, that, at least through April 15, 1976, Local 807 did not show any signs of being receptive to individual bargaining on the part of Pinter and the other employers in the area who had withdrawn from TEI.

<sup>3</sup> Carney was an extremely credible witness; although the termination of Pinter's operation meant that he lost employment of 20 years' duration, he testified in a fair and frank manner. His testimony regarding this meeting is clearly credited over that of Robert.

<sup>4</sup> This was necessitated by the fact that all the trucks left the Deer Park terminal at or about the same time, causing a traffic jam and a long delay for the trucks before they could get on to the Long Island Expressway; to alleviate this, Pinter desired the relief of flexible starting time for the drivers in the morning.

<sup>5</sup> I found Spera to be a fair, frank, and credible witness.

<sup>6</sup> On cross-examination Spera testified that Robert said "he had an option to close down . . . ."

out the years?" Robert answered: "The name of the game is to make money."

Robert testified that at this meeting he told the employees that Local 807 told him that Pinter had to accept the national agreement although Pinter wanted to negotiate its own agreement. Robert testified that he never informed the employees that there was a possibility that Pinter would close its operation for a period of time and reopen without a union or with a different union, and he does not know whether the subject of flexible starting times was discussed at this meeting.<sup>7</sup>

On April 1, 1976, Local 807 went on strike and a picket line was set up at the Deer Park terminal. On or about April 5, 1976, Pinter and Troiano entered into a letter agreement with Local 807 providing for the employees to return to work from April 6 through 16, 1976, under the terms of the expired national agreement, during which period the parties would engage in negotiations; any agreement would be retroactive to April 6, 1976. The parties could not reach any agreement during this period and the strike resumed on April 17, 1976.<sup>8</sup>

Between that date and May 18 there were a number of other fruitless meetings between Robert and Joe Sr. and representatives of Local 807. On April 30, 1976, Administrative Law Judge Bernard Ries issued his Decision in what would later be 227 NLRB 921, in which he found that Pinter violated Section 8(a)(1), (3), and (5) by, *inter alia*, discharging and laying off certain of its clerical employees, threatening its employees, and refusing to recognize and bargain with Local 807 as the representative of its clerical employees.

It was during that period that Mor made his appearance; on Friday, May 7, 1976, Mor called Joe Jr.<sup>9</sup> and said that he was operating Towers Transportation. He told Joe Jr. that he knew that Pinter was having labor problems and he might be able to help them move some loads out of the Deer Park terminal. Joe Jr. discussed this call with Robert, and met Mor later that day at a Pinter terminal on Sullivan Street in New York City. According to Joe Jr. all that occurred at this meeting was that Mor told him that he would be able to remove the four loads from the Deer Park terminal; there was no discussion of compensation for this work nor did Mor indicate how he would assist Pinter in its labor problems.

The next morning, May 8, 1976, at or about 3 o'clock, Mor arrived at the Deer Park terminal with drivers and four tractors; only Robert of the Pinters was present. With much difficulty, these four tractors took trailers from the Deer Park terminal to a terminal Mor maintained in New York City. Mor was able to deliver some of the contents of these four trailer loads, and billed the customers for the delivery.

<sup>7</sup> For the reasons stated, *supra*, I would credit the testimony of Carney and Spera over that of Robert.

<sup>8</sup> One of the disputed issues (in addition to flexible starting times and Saturday work at regular rates) was art. 31 of the national agreement, which provided that the employer belongs to the TEI; Pinter, of course, objected to this provision, but I will not discuss this further because I do not find it relevant to the issues herein.

<sup>9</sup> Where necessary I have credited the testimony of Joe Jr. over that of Mor; I do this reluctantly, because Joe Jr.'s testimony of this meeting is not very plausible, but it is still more believable than that of Mor.

About 10 days later there was a meeting at Mor's New York City terminal, attended by Mor, Robert, Roger Troiano, an officer of Troiano, Joseph Mangan, president of Local 807, and John Hohmann, vice president of Local 807. At this meeting Mor acted as an intermediary in order to assist the parties in settling the disagreement; the parties could not reach any agreement, however.

On or about May 25, 1976, Hohmann and Spera, while picketing at the Deer Park terminal, observed Joe Sr.<sup>10</sup> speaking to some of the pickets, while he was still in his car; they both approached his car and Hohmann told Joe Sr. that the situation had gone far enough; what was his big (or biggest) problem. Joe Sr. answered that "the girls" were his problem, that he did not want them in the union. Hohmann asked if that was the only problem (or if he had other problems) and Joe, Sr., said the girls were his only problem. Hohmann told Joe Sr. that he would report back to Local 807 President Mangan to see if anything could be worked out; President Mangan told Hohmann to check with attorney Mangan who informed him that under the Labor Board's Decision the clericals involved were entitled to backpay, but Local 807 could possibly work something out with Pinter about the clericals being in the Union. Hohmann then called Joe Sr. and asked him who would be negotiating for him (he testified that he did not mention the clerical employees in this conversation); Joe Sr.'s answer was: "What else are you going to give us"; that was the extent of the conversation.

On June 1, 1976, Pinter (by Joe Sr.) and Troiano wrote virtually identical letters to Local 807 reiterating the history of their withdrawals from the TEI, and stating that since they had made proposals at the last meeting of May 18, and had received no proposals from Local 807, "you have left us no alternative but to shut down operations . . . We are prepared to meet with you at any reasonable time and place to discuss the effects of this termination." On June 10, 1976, Pinter (by Robert) and Troiano again wrote to Local 807 referring to their June 1 letter, stating: "We are immediately prepared to meet with you for this discussion at any time and place that may be mutually convenient." In between these two letters there was a negotiating session between the parties; present, at this meeting on behalf of Pinter, were Robert and the then Pinter attorney (and counsel for Pinter in the backpay specification herein), Herbert Burstein together with Peter Troiano and representatives of Local 807. No agreement was reached at this meeting.

Virginia McCrystal, a reporter for a local newspaper, "The Beacon in Babylon," testified that she and another woman wrote an article for the newspaper about the Pinter strike. In that regard she interviewed members of the Pinter family and employees who were on strike. In or about the beginning of June 1976 she spoke with Joe Sr. He said that since he was a local company he wanted to have a contract different from the national agreement. He also told her that the strike had not been settled; that he would like to meet with the men and have them decertify the union and form their own company union,

<sup>10</sup> Joe Sr. did not testify.



and he would work with them to give them decent pay and good benefits.

An agreement was reached between Pinter (by Robert) and Local 807 on September 24, 1976. Without ascribing blame to either party (as it would not be relevant to the issues herein) suffice it to say that the settlement fell apart on the next workday when Pinter's Local 807 members refused to ratify the agreement.

The strike continued until on or about December 6; on that date Pinter, by Robert, and Local 807, by President Mangan and Hohman, entered into a collective-bargaining agreement effective from that date through March 31, 1979.

On January 12, 1977, the Board issued its Decision and Order in 227 NLRB 921, in which it, *inter alia*, affirmed the Decision of the Administrative Law Judge in granting a bargaining order for Pinter's clerical employees.<sup>11</sup>

Although the parties entered into this new agreement on December 6, 1976, Pinter encountered difficulty reacquiring its past customers; because of this, its business decreased drastically from the prior year and it used few drivers; the largest number of drivers it used between December 1977 and April 1978 was 11 compared to its usual prestrike complement of 80 drivers. Spera, Tom Aikin, and Arthur Kershaw were the most senior drivers at Pinter and beginning on their first day of employment after the strike ended, December 7, 1976, they had, on occasion, relinquished their right to work on some days to give work to other drivers further down on the seniority list, i.e., sharing the work, and Robert testified that Pinter had no objection to this procedure. Spera testified that, when he arrived for work in the morning sometime in March 1977, he asked the dispatcher, Joe Franklin, as was his custom, how many men he was going to use and Franklin said he did not know. When he asked Franklin for the third time, Franklin said, "I have runs here, you want to work today?" Spera said he did not. When Franklin asked Aikin and Kershaw, they also stated that they would not work and they walked out. As they were leaving they met Robert and Spera told him that they were going home in order to give the next man a chance to work and Robert said, "that's a voluntary quit." Robert testified that this was not a situation where the drivers shared the work, but one in which they simply refused to make the delivery in question and were therefore discharged.

On April 7, 1977, the arbitration of these discharges was heard by Impartial Chairman Hugh Sheridan. He decided that Spera, Aikin, and Kershaw were wrong in their action because they merely refused to work rather than requesting it be given to another. However, he found that "the penalty for the activity is mitigated only in view of the circumstances which presently obtain as a result of the strike." He ordered that the three grievants be reinstated, beginning May 2, 1977, but without back-pay.

<sup>11</sup> In 233 NLRB 575, the Board found that Pinter violated Sec. 8(a)(1), (3), and (4) of the Act by, *inter alia*, discriminating against certain of its clerical employees due to their activities on behalf of Local 807, and their having filed charges with the Board, or testified at a Board hearing: The Administrative Law Judge's Decision issued on May 6, 1977; the Board's Decision and Order on November 17, 1977.

On May 2, 1977, Spera, Aikin, and Kershaw arrived at the Deer Park terminal and while there met Joe Sr. who asked them, "What are you fellows doing here?" They said they were reporting back to work and Joe Sr. said, "What work? There's no work for you guys, I'm out of business." Spera then called Hohmann and informed him of this conversation. Hohmann and Local 807 Organizer John Lenihan<sup>12</sup> then went to the Deer Park terminal where they met with Joe Sr., Robert, and Franklin. At this meeting Hohmann told Joe Sr. that he was notified that Pinter was going out of business and Joe Sr. said that was correct. Hohmann asked what the problem was and Joe Sr. said there were two problems—one was the clericals in the office and that he would turn over in his grave before he would pay them backpay, and the other problem was that he did not like attorney Mangan. Hohmann asked if there were anything he could do, and Joe Sr. said there was not and Hohmann asked him to send Local 807 a letter to that effect.

Robert testified that sometime in April 1977 Joe Sr. asked him about Pinter's profitability.<sup>13</sup> After examining the financial records they discussed terminating Pinter's trucking operations. Robert also testified that Joe Sr. had not made the final determination to terminate Pinter's trucking operation until he received Impartial Chairman Sheridan's decision (dated April 14, 1977). Upon receiving this decision, Joe Sr. was angry about it and referred to it as "the straw that broke the camel's back." The evidence establishes that after May 2, 1977, Pinter did not operate its own trucking operation.

For the relevant period herein, and prior to May 2, 1977, Joe Sr. was "the boss" at Pinter: Hohmann testified that even with his dealings with Robert, "most of the time" Robert indicated that he had to get the approval of Joe Sr. for his commitments. Similarly, it was Joe Sr. who determined who the corporate officers would be, and who would be authorized to sign checks on behalf of the companies. During this same period, Franklin was in charge of Pinter's warehouse operation. Joe Jr. was in charge of Pinter's sales force (obtaining new customers for its trucking operations). He was also in charge of Pinter's truck leasing operation when it began in late 1976. Robert was in charge of the trucking operation itself; as stated, *supra*, he met with Local 807 representatives to discuss any difficulties between the parties, and sat in on the negotiations for a new collective-bargaining agreement in 1976. He also oversaw the loading of the trucks in the mornings and supervised the dispatchers.

Although Pinter's leasing operation had its main thrust of activity after May 2, 1977, Pinter began leasing equipment and doors at its Deer Park terminal in or about October 1976. At the time, Pinter owned approximately 225 pieces of rolling stock composed of tractors (the engine and cab used to pull a trailer or semitrailer), straight trucks, trailers and semitrailers (whereas a trailer has a set of front wheels and back wheels, a semitrailer only has back wheels) and, itself, utilized all 77 doors at its

<sup>12</sup> Although he was somewhat flip in his testimony, I found Lenihan to be a credible and frank witness.

<sup>13</sup> Pinter's 1976 tax return shows a loss in excess of \$1 million; its 1977 tax return shows a loss of \$288,000.



Deer Park terminal. In or about October 1976 Pinter leased approximately 100 semitrailers to the United States Postal Service. This was during the period of a strike at United Parcel Service, and it was a day-to-day lease, at a set price. All the semitrailers were returned by the end of the year. Rolling stock was also leased to private trucking companies during this period, but during the period prior to May 1977 never more than 50 percent of the rolling stock was out on leases at any one time. In addition, prior to May 1977, Pinter leased doors that it was not using at its Deer Park terminal to Wilson Freight Company, herein called Wilson, Carolina Freight Carriers, herein called Carolina, Transcon Lines, herein called Transcon, and We Transport, Inc.<sup>14</sup> The earliest door lease was in January 1977.

#### *B. Post-May 2, 1977, Events*

In or about May 1977, Robert, Joe Jr., and Franklin each invested \$7,500 in Imperial Motor Lines, Inc., herein called Imperial, a trucking company located in Long Island; this represented a 20-percent interest in Imperial. Robert was called by a man whom he had known for many years who was a principal of Imperial. He asked Robert if he wanted to become involved in Imperial; they met; and at this meeting it was agreed that Robert would purchase a 20-percent interest in Imperial for \$22,500 and, at the same time, Robert would work for Imperial because of the contacts he had and the people he knew. Joe Jr. and Franklin agreed that they, together with Robert, would each invest \$7,500 of the total \$22,500. No money of any of the Pinter companies was invested in Imperial. Robert worked at Imperial from about mid-May 1977 to mid-July 1977; during this period he did not receive a salary from Imperial, but he continued to receive his \$500-a-week salary from Pinter and maintained his office as president of Pinter; his father never asked him to resign, but did tell him, when he began working for Imperial, that he would "carry it for awhile." While at Imperial, Robert performed tasks involved with operations and sales and attempted to solicit former customers of Pinter to ship freight through Imperial. By the middle of July, Robert was convinced that Imperial's operation did not have a high prospect of success; additionally, he found that the other principals were not working as diligently as he was, and so he left Imperial and returned to Pinter.<sup>15</sup> On July 15, 1977, Robert entered into an agreement with Imperial in which Robert agreed to transfer all his (really his, Joe Jr.'s, and Franklin's) interest and title in Imperial to Imperial, and Imperial agreed to pay to Robert \$22,500; \$1,372 upon the signing of the agreement and \$250 a week until the full amount was paid. Imperial made a few payments of \$250 (which Robert split with Joe Jr. and Franklin) and paid no more. Robert then sued Imperial for the remaining amount due and there was a settlement wherein Imperial agreed to pay \$75 a week, which it has been paying, albeit, intermittently. During the 2 months of Robert's

employment at Imperial, Imperial had leased two to four tractors and one or two trailers from Pinter, which Imperial never paid for. The July 15, 1977, agreement between Imperial and Robert provides for the cancellation of that debt. Prior to entering into this agreement, Robert, Joe Jr., and Franklin met with Joe Sr. and informed him that they wanted to be reimbursed by Imperial for this investment, and unless Joe Sr. agreed to waive these amounts due from Imperial, the agreement would be delayed. Although he was "quite angry," Joe Sr. agreed. Robert never personally repaid this Imperial debt to Pinter.

Beginning in or about September or October 1977, Robert and Joe Jr. began discussing with Mor the possibility of their operating a Long Island terminal for GLT Transportation.<sup>16</sup> Mor approached Robert and Joe Jr. and said that he would like them to operate a Long Island terminal for GLT Transportation. Robert and Joe Jr., who wanted to return to the trucking business, said that they would consider it. In October, Robert and Joe Jr. met with Mor and other representatives of GLT Transportation, at which time it was agreed that Robert and Joe Jr. would operate the Long Island terminal for GLT Transportation;<sup>17</sup> the means of operating the terminal was to be left to the discretion and expertise of Robert and Joe Jr.; Mor supplied Robert and Joe Jr. with GLT Transportation's bills of lading; whereas the Jersey City terminal's bills of lading had a "J.C." preceding the six digit bill numbers and the Philadelphia terminal had a "P" preceding the bill numbers, the Long Island operation bills had a "3" preceding the bill number. Mor did not supply Robert and Joe Jr. with a terminal, tractors, or trailers. Their agreement was that, if the Long Island operation made the pickup and delivery, it would keep 100 percent of the freight charge; if one of the other terminals made the pickup and delivery, Robert and Joe Jr. received nothing; if one made the pickup, and the other the delivery, they would share the freight charges 50-50; and there would be monthly accountings for reconciliation of amounts. Robert and Joe Jr. were responsible for the costs of operating the Long Island terminal, would do their own billing, and would share the profits of GLT Transportation, 50-50. They also had their own bank account. There was no agreement reached on any salary to be paid to Robert and Joe Jr., but when they began operating they paid themselves \$800 a week each. About a month or two later an attorney for Robert and Joe Jr. prepared an agreement setting forth these terms, including the salaries they had been receiving; it was never executed. Robert testified that at the time of this October meeting with Mor and his associates he did not know whether GLT Transportation had a collective-bargaining agreement with any union, and he does not remember whether, at this meeting, Mor told him that GLT Transportation had a contract with Local

<sup>16</sup> GLT Transportation, even prior to Robert and Joe Jr.'s association with it, was leasing trailers from Pinter.

<sup>17</sup> Although the testimony was that Mor owned GLT Transportation, in June 1977, Ben Ary executed formal state documents as the sole stockholder of GLT Transportation. Regardless, it is undisputed that neither Robert, Joe Jr., nor any Pinter family member owned any interest in GLT Transportation.

<sup>14</sup> Parties that lease doors at the Deer Park terminal are also allocated office space at the terminal.

<sup>15</sup> From this time until about November 1, 1977, Robert was involved in trying to expand Pinter's maintenance business and assisted Joe Jr. in the leasing operations.

88. Mor did tell him that hiring employees for the Long Island operation would be the responsibility of him and Joe Jr.

Shortly after this meeting (and still in October 1977) Robert and Joe Jr. met with Joe Sr. They explained that they were going to run the Long Island terminal for GLT Transportation and that they would be renting doors and equipment from Pinter. According to Robert's testimony, Joe Sr.'s response was, "[W]ell, you are going to be treated like everybody else."

Shortly thereafter, Franklin advised Joe Sr. that if Robert and Joe Jr. were going to be working for another common carrier they should not be officers of Pinter; Joe Sr. agreed and Franklin prepared resignations for Robert and Joe Jr. dated November 1, 1977. They stated: "I hereby resign as President<sup>18</sup> and director of Pinter Bros., Inc., effective immediately."<sup>19</sup> On this date they ceased receiving a salary from Pinter.

Robert and Joe Jr. began operating the Long Island terminal for GLT Transportation beginning on November 1, 1977, and their operation continued through March 1978. During this period they maintained their office area at the Deer Park terminal, in the office area where Pinter and companies leasing doors from Pinter maintain their office; during this period they also leased tractors and trailers from Pinter and leased doors at the Deer Park terminal.

Since it began leasing its rolling stock, Pinter has employed forms entitled truck rental agreement, which set forth all the information required for the leasing of Pinter's rolling stock—name of customer, identity of the equipment, rate, whether a deposit was required, and other relevant information. Between October 29, 1977, and January 31, 1978, Robert and Joe Jr. (at a time that they were operating the Long Island terminal of GLT Transportation) prepared and/or signed 154 truck rental agreements as "Signature, Pinter's Agent." During the same period other agents of Pinter prepared and/or signed 218 truck rental agreements. From February 1 through October 31, 1978, Robert and Joe Jr. prepared and/or signed 8 truck rental agreements; 513 were signed by other agents of Pinter. Prior to November 1, 1977, a vast majority of these truck rental agreements were prepared and/or signed by Joe Jr. Robert and Joe Jr. testified that they typed these agreements in Pinter's maintenance office (separate from their office); they used the chart prepared by Pinter which lists the rates for each of the vehicles, and Pinter's computer printout which lists the customers whom you can give credit to, and those you cannot. Robert and Joe Jr. were not paid by Pinter for preparing these truck rental agreements. Although they were never specifically told that they were authorized to prepare these agreements after November 1, 1977, they had done so before November 1, 1977, and continued to do so afterward.

<sup>18</sup> Joe Jr.'s resignation is from the position of vice president and director.

<sup>19</sup> They have never relinquished or sold their stock (or partnership interests) in the Pinter companies they own together with the other family members. Also, as stated, *supra*, it was not until January 4, 1978, that a new corporate resolution was instituted for Pinter authorizing Franklin, Joe Sr., and his wife to sign checks for Pinter.

#### Local 807 Knowledge

Hohmann testified that, in April or May 1978, a former Pinter employee, George Rommeney, applied to Local 807 for his pension; because he had received reports that Rommeney was working, and the trust of the Local 807 pension does not allow employment in the industry, Hohmann went to the Deer Park terminal to investigate. He observed Rommeney enter the Deer Park terminal at or about 6 a.m. At about 8:30 a.m. he observed a tractor and trailer leaving the Deer Park terminal; the tractor had the name GLT on it while the trailer bore the Pinter name. The driver whom Hohmann did not know was wearing a shirt with a Pinter emblem on it. Hohmann approached the driver and asked him what he was doing with a Pinter trailer; the driver told him that he was employed by GLT out of New Jersey and did not belong to any union. Hohmann testified that this was the first occasion that he observed equipment with the name GLT, or was informed by anyone that he was employed by GLT Transportation.

Vincent Cancellaro, who had been employed by Pinter for 8 years as a driver before the May 1977 shutdown, testified that in or about December 1977, he heard from some other drivers that Robert and Joe Jr. were "going out on their own again." He called the Pinter telephone number and requested, and was connected with, Joe Jr. He told him that he needed a job and Joe Jr. told him that he and Robert were operating as GLT Transportation, but only in Nassau and Suffolk Counties. Joe Jr. said that as Robert was away he could not make any decision on hiring Cancellaro, but suggested that he call back later. Shortly after New Year's 1978, Cancellaro called again and went to see Robert and Joe Jr. They informed him that as GLT Transportation they did not want to handle New Jersey shipments, which was the area covered by Cancellaro while he was employed by Pinter. Cancellaro informed them that he had a good relationship with his former customers in New Jersey, and he felt he could get them as customers for GLT Transportation. Robert said that they had nothing to lose and told Cancellaro: "[T]ake a trailer and go over there and see what you can do." He took the trailer to New Jersey and was successful in obtaining his former Pinter customers for GLT Transportation, and began his employment with Robert and Joe Jr. first as GLT Transportation, and later as Troiano.

Cancellaro testified that about 2 weeks later Hohmann approached him while he was leaving the Deer Park terminal with a tractor and trailer<sup>20</sup> and said that he wanted to speak to Cancellaro. He told Hohmann that he could not speak to him and drove away. He testified further that, about a week later while he was having coffee in a Long Island restaurant with other GLT drivers, he was approached by Spera and Lenihan. They asked him why he was working for Bobby and Joe; he said he had a family and they had to eat and that he had been out of work for 2 years. He got up and left. About a week later they again approached him while he was having coffee

<sup>20</sup> Cancellaro testified that at this time neither his tractor nor trailer had the name GLT on them.

and asked him why he was working for Bob and Joe with what Pinter had done to Local 807 during the strike. Cancellaro said, "I have a family and they have to eat and I have no choice, I have to work." They asked him about the Union and he said he did not know that there was a union and he did not care as long as his family was eating. At that point Spera and Lenihan left. In neither of these conversations was GLT Transportation named by either Cancellaro, Spera, or Lenihan.

Cancellaro testified that in March 1978 (while he was employed by Robert and Joe Jr.) he was driving in Jersey City for a pickup; he observed trucks driven by Spera and another former Pinter driver, Harry Hackmuller, and they attempted to drive him off the road. When Cancellaro called Hackmuller that evening, to warn him against repeating the incident, Hackmuller told him that they were only joking around. Spera testified that in "the early part of 1978" as he was driving a truck in New Jersey he passed by Cancellaro driving a tractor and trailer, each with the Pinter name; as their trucks passed each other, Cancellaro waved to him. That night, Spera called Cancellaro and asked, "How come you're working for them people again?" Cancellaro said, "I couldn't find any work, I was on the verge of losing my house, and I had to go back to Pinter." Spera testified that Cancellaro identified his employer as Bob Pinter.<sup>21</sup>

Spera testified that a few days after he spoke with Cancellaro<sup>22</sup> he met George Rommeney and four other former Pinter employees (all except one, a dispatcher, had been members of Local 807) at the Deer Park terminal; they told him that they were working under Troiano rights, that Robert and Joe Jr. were in the trucking area of the business, Franklin was involved in the warehouse, and Joe Sr. was not involved.

As stated, *supra*, from November 1977 through April 1978 (as the Long Island operation of GLT Transportation) and from mid-April 1978 to the present time (as Troiano), Robert and Joe Jr. have leased tractors and trailers and leased doors from Pinter; it is uncontested that numerous other companies have also leased trucks and doors during this period from Pinter. Counsel for the General Counsel and counsel for the Charging Party allege that the operations of Robert and Joe Jr. were given special privileges by Pinter over its other customers in areas such as price (or even requiring any payment), terms, or the need for a deposit. It is the contention of counsel for the General Counsel and counsel for the Charging Party that this is a factor in establishing that the operations of Robert and Joe Jr. are *alter egos* of Pinter.

#### Door Leasing

Beginning on or about November 1, 1977, Robert and Joe Jr. began leasing doors at the Deer Park terminal; at

that time they leased two doors at the rate of \$200 a month per door; this was the door rate charged all its customers at the time whether they leased 1 door or 26 doors. (In addition to the monthly charge for the doors, all tenants paid an extra charge to Pinter Realty for their employees' on-premises parking.) At the time, Robert and Joe Jr. did not sign a lease with Pinter Realty,<sup>23</sup> they were simply billed each month for the doors. Although the rule was that door rentals were payable in advance, Robert and Joe Jr. did not advance this money to Pinter Realty prior to beginning their use of the doors. Franklin testified that although, theoretically, door-lease payments were due in advance, in actuality it was rare that these payments were received at that time from its tenants. (He testified that although Carolina Freight Carriers Corporation, herein called Carolina, usually paid within the first 10 days of the month, other tenants were often months behind.)

On or about May 2, 1977, Pinter Realty had 26 doors leased to Carolina and Wilson, and was about to begin a lease of 14 doors to Transcon Lines out of the 77 doors available at the Deer Park terminal. In November 1977, Wilson was leasing 14 doors, Carolina, 16, Transcon, 14, and the corporate spinoff of Overnite Transportation, herein called Overnite, rented 4 to 6 doors. At the time of the hearing all the doors at the Deer Park terminal were leased; Troiano was leasing 14.

A 1-year lease between Pinter and Wilson, effective from March 1, 1977, provides for the lease of 10 specified doors at an annual rental of \$24,000 (i.e., \$200 per door monthly). A deposit of \$2,000 was paid to Pinter Realty pursuant to the terms of this lease. A 1-year lease between Pinter Realty and Wilson for the period March 1, 1978, through February 28, 1979, provided for the lease of 14 specific doors at a yearly rental of \$35,380 (\$210 a door, monthly). This lease gave Wilson the option of extending the lease for an additional year at a yearly rental of \$37,044 (or approximately \$220 a door, monthly). On March 15, 1979, Pinter Realty and Wilson executed an agreement effective for the period October 1, 1978, through September 30, 1980. The lease provided for the rental of 26 specified doors at an annual monthly rental of \$5,400 for the first year (approximately \$208 monthly per door) and \$5,670 monthly for the second year (approximately \$218 monthly per door). Wilson paid a security deposit of \$5,400 to Pinter Realty pursuant to this agreement.

Additionally, there is a 3-year lease of doors between Pinter Realty and Transcon, for the period May 1, 1977, through April 30, 1980. The lease, with an appendix that specifies the 14 doors being leased to Transcon, provides for yearly rentals of \$33,600 (\$200 a door per month), \$35,280 (\$210 a door monthly), \$37,044 (approximately \$220 per door monthly), and an option year at \$38,896 (approximately \$232 per door monthly). There is no mention in the lease of a deposit.

There is also a 3-year door lease executed between Pinter Realty and Carolina, for the period February 1, 1977, through January 1, 1980. This provided for the

<sup>21</sup> Although I have generally credited Spera's testimony, I was impressed by Cancellaro's frankness while testifying, and I credit his version of this incident as regards the minor conflicts in their testimony.

<sup>22</sup> The phrase, "A few days after he spoke with Cancellaro," would place this conversation in early 1978; however, because Spera was informed by these individuals that they were working under Troiano rights, I find that this conversation occurred no earlier than April 1978, when Robert and Joe Jr. began operating under the Troiano rights.

<sup>23</sup> Franklin testified that other tenants, as well, did not have a written lease; this is still true.

leasing of 20 specified doors at a yearly rental of \$2,400 a door for the first year (\$200 monthly), \$2,500 for the second year (\$210 monthly), and \$2,646 for the third year (approximately \$220 monthly). Carolina paid to Pinter Realty a deposit of \$2,400 as security.<sup>24</sup>

In May 1978 and May 1979, Troiano executed leases with Pinter Realty for the lease of doors at the Deer Park terminal. The earlier lease was executed by Franklin for Pinter Realty and Joe Jr. for Troiano and was for the period May 1, 1978, through April 30, 1979, and is for the "monthly rent of two hundred twenty five . . . dollars per truck door used by the Tenant." No specific doors are designated nor is the number of doors to be leased specified in the agreement. No security deposit was paid by Troiano to Pinter Realty. The following lease was for the period May 1, 1979, through April 30, 1980, and was also for the "monthly rent of two hundred twenty five . . . dollars per truck door used by the Tenant. Again, no specific doors are designated in the agreement, and neither is the number of doors to be leased spelled out in the agreement. No security deposit was paid.

Although they did not enter into a written agreement with Pinter Realty for the leasing of doors at the Deer Park terminal until May 1, 1978, Robert and Joe Jr. (as GLT Transportation) began leasing doors for Pinter Realty beginning on or about November 1, 1977. For at least November and December 1977, they leased two doors. There is no evidence that they were ever sent a bill, or made any payment, for the doors they leased in November 1977; Robert and Joe Jr. were billed for the leasing of two doors in December and they paid this bill (\$400) on December 19, 1977. No bill was sent to Robert and Joe Jr. in January 1978 for the leasing of doors and no payment was received from them in that month; in February 1978 Pinter Realty sent Robert and Joe Jr. a bill for \$1,575; Franklin could not identify the period of time for which the bill was issued, and as to whether that bill was paid, he testified: "It might have been paid, yes. We did not receive a check in that exact amount." In fact the next payment received from Robert and Joe Jr. (the first since December 19, 1977) was a check in June 1978 in the amount of \$2,969. Between the February billing, *supra*, and the receipt of this check from Robert and Joe Jr. in June, Pinter Realty billed Robert and Joe Jr. the following amounts: March—\$1,800; April—\$1,484.50; May—\$1,484.50; and June—\$1,804. Franklin testified that the Pinter Realty books indicated that check received in June was intended to cover the rentals billed in April and May, although he does not know why it was credited against these months rather than for the balance due from the billed months of February and March, or the unbilled months of November 1977 or January 1978. Sometime in July 1978, Robert and Joe Jr. paid to Pinter Realty a check in the amount of \$1,804 to cover the June billing for doors.

For the next 18 months, Pinter Realty's billing to Robert and Joe Jr. (as Troiano), together with payments received from them, are as follows:

	Billed by Pinter Realty	Paid by Troiano
July 1978	\$2,050	
August	2,400	\$2050
September	2,175	
October	2,630	2,400
November		2,175
December	* 6,750	2,630
January	4,500	
February	4,500	
March	4,500	<sup>b</sup> 6,750
April	4,500	
May	4,500	<sup>c</sup> 9,000
June	4,500	
July	<sup>d</sup> 4,500	
August		
September		
October		
November		*18,000
December		

\* Franklin testified that this was a combined bill for November and December which may have been caused by the fact that Pinter Realty forgot to send Troiano the November billing. Franklin also testified that this combined bill was sent to Troiano in either December 1978 or January 1979. What is confusing is that although Franklin testified: "I have a bill for two months, November and December 1978"; Respondent Pinter Exh. 26 (billings to Troiano for doors in 1978) contains two bills for November (one for 20 doors at \$4,725 and the other for 15 doors at \$3,375) and two bills for December (again 20 doors at \$4,725 and 15 doors at \$3,375). Robert testified that this discrepancy may be explained by the fact that during this period they ceased renting 20 doors and began renting 15 doors.

<sup>b</sup> This payment, received on March 15, 1979, was processed to cover the combined November-December 1978 billing.

<sup>c</sup> This \$9,000 payment, received on May 17, 1979, was applied to the January-February 1979 rentals.

<sup>d</sup> The figures for August through December 1979 were unavailable to Franklin during his testimony because the 1979 books of Pinter Realty that he was referring to while testifying are on a cash basis; as July was the last month in 1979 for which Troiano paid Pinter Realty for door rentals in that year, that was the last entry for that year.

\* This amount is represented by two payments of \$9,000; one received on December 14 and that other on December 18, 1979. Franklin testified that the first check was applied to the April-May 1979 rentals and the second check to the June-July rentals.

When questioned by counsel for the General Counsel regarding these tardy rental payments by Robert and Joe Jr., Franklin testified that Pinter Realty did not sue Robert and Joe Jr. for these amounts or attempt to evict them or charge them a service charge for their late payments. He testified that Pinter Realty, to compensate for these late payments, charged Robert and Joe Jr. a higher monthly rate per door (\$225) than other tenants who rent a similar amount of space, such as Carolina and Wilson.

#### Truck and Trailer Leasing

As stated, *supra*, during the relevant period herein, Pinter has owned approximately 225 pieces of rolling stock composed of tractors, trailers, semitrailers, and straight trucks, and since about mid-1976 Pinter has been engaged in leasing this equipment to the public. Beginning in or about November 1977, Robert and Joe Jr. began to lease equipment from Pinter under the name

<sup>24</sup> The above-mentioned leases, although some of the largest executed by Pinter Realty at the time, are not the only door leases it executed during this period.

GLT Transportation;<sup>25</sup> they began with one or two trucks and increased the number as their operation grew. Franklin testified that, since 1976, Pinter Leasing's rates have changed and he could not testify with certainty that any customer with the same assets and requirements as Robert and Joe Jr. was charged the same rates as GLT Transportation and Troiano, although they "probably" were. This is difficult to determine because of changing rates and variables in the size and dependability of customers. However, as stated, *infra*, between April and November 1978 Troiano entered into numerous truck rental agreements with Pinter wherein it leased, *inter alia*, tractors. These were generally tractors numbers 189, 190, 200, and 207; the monthly charge for each of these tractors is stated as \$1,100 a month, including any required maintenance. There was no mileage charge. In August and September 1977 Spector Freight, herein called Spector, entered into truck rental agreements with Pinter for the rental of tractors numbers 180, 182, 183, and 185.<sup>26</sup> The monthly charge to Spector for each of these tractors was \$900; there was no mileage charge and Spector was responsible for full maintenance.<sup>27</sup>

Pinter Leasing prepared computer readouts regularly, listing each customer, together with the unpaid invoices as of that date, the dollar amount of each invoice, and the total amount due on that day. In evidence are the Pinter leasing accounts receivable details, dated May 31, 1978, and November 30, 1978. The listing for "GLT Transportation Lines" contains one \$1,500 credit, dated September 13, 1977, and listed as "Cash on Account." It also lists 45 unpaid invoices (most of which are in the amount of \$157.50, presumably the \$150-a-month trailer charge, plus tax) dating from November 15, 1977, through June 21, 1978. The "Account Total" due from "GLT Transportation Lines" is \$5,079.94. Franklin testified that this "GLT Transportation Lines" account is the account of GLT Transportation in New Jersey and represented the invoices for the trailers it (rather than Robert and Joe Jr.'s operation) rented from Pinter. This account appears on both the May and November 1978 printouts.

Appearing only on the earlier printout is an account entitled "GLT." It contains a credit balance of \$197. The invoices on this account date from December 29, 1977 (a \$2,000 credit) to May 15, 1978 (a \$660 charge). Franklin testified that this account was the account maintained for billing of rentals to Robert and Joe Jr.'s operation. Also listed on the May 1978 readout, but not on the November 1978 readout, is an account number 56400 and entitled "Pinbro." All the invoices are dated between May 18 and May 31, 1978, and the total account balance is

\$6,025 owed to Pinter Leasing. Franklin testified that this account was also that of Robert and Joe Jr. and this seems reasonable as chronologically it continued from the date that the "GLT" account ended.

Appearing in the November 1978 accounts receivable readout, but not the one in May, is an account entitled "Troiano" with the account number 56400, the same account number that "Pinbro" had earlier. The earliest invoice in this listing is June 9, 1978, and it shows a total amount due (as of November 30, 1978) from Troiano to Pinter Leasing of \$28,871.<sup>28</sup> There can be no doubt that this account represents the receivables incurred by Robert and Joe Jr.'s operation of Troiano.<sup>29</sup>

On April 1, 1978, Troiano (by Robert) entered into a truck rental agreement providing for the rental of nine specified trailers<sup>30</sup> at \$200 a month, four specified tractors at \$1,100 a month, and two specified trucks at \$900 a month.<sup>31</sup> The May 1, June 1, August 1, and September 1, 1978, truck rental agreements provide for nine specified trailers at \$200 a month and one specified truck at \$900 a month. The July 1, 1978, agreement provide for nine specified trailers at \$200 a month and one truck for 2 weeks at \$225 a week. The October 1, 1978, agreement provides for the same truck at \$900 a month, 2 specified tractors at \$1,100 a month, and 28 specified trailers; the 30-foot trailers at \$85 per month,<sup>32</sup> and the 40 and 44-foot trailers at \$110 a month. The November 1, 1978, agreement provides for 2 specified tractors at \$1,100 a month, five 30-foot trailers at \$85 a month, and 17 40- and 44-foot trailers at \$110 a month. On November 1, 1978, Pinter and Troiano entered into a "Long Term Lease" which provided that Pinter would lease to Troiano 22 specified trailers for a term of 60 months. The price per month (which included maintenance) was \$85 for the 30-foot trailers and \$110 for the larger trailers.<sup>33</sup>

Franklin also testified that the November 1, 1978, long-term lease was executed because Troiano wished to qualify for a lower rental rate. Under their leases Troiano was not required to pay Pinter a deposit although, at times, Pinter has required other lessees to pay a deposit, depending upon their credit standing.

Robert testified that in November and December 1977 he leased a few tractor and trailers from Pinter; the first payment he made to Pinter for this equipment was an amount of \$2,000 on December 30, 1977; the notation on the check stub says "trucks for December, on account."

<sup>28</sup> As of the same date, Wilson was indebted to Pinter Leasing in the amount of \$30,000; the next largest debts on that date (aside from that of Troiano) were in amounts of \$14,000; \$10,000; two \$9,000 debts; and two \$8,000 debts.

<sup>29</sup> It should be noted that these are only the unpaid Troiano invoices. Franklin testified that Troiano did pay other invoices during this period.

<sup>30</sup> In all the truck rental agreements discussed *infra*, Troiano rented trailers of all three sizes—30 foot, 40 foot, and 44 foot.

<sup>31</sup> In these monthly truck rental agreements, the charge to Troiano includes any maintenance that had to be performed on the vehicles.

<sup>32</sup> There was no explanation for the substantial decrease in this monthly rental for trailers; however, it may be explained by the increase in the number leased.

<sup>33</sup> As will be stated, *infra*, in January 1978 and thereafter, Robert and Joe Jr. purchased tractors. Therefore since on or about mid-1979, they have leased only trailers, and almost exclusively from Pinter.

<sup>25</sup> Even prior to the entry of Robert and Joe Jr. into the GLT Transportation operation, GLT Transportation, in New Jersey, had leased equipment from Pinter. On September 13, 1977, GLT Transportation of Jersey City executed a truck rental agreement with Pinter, wherein it leased a trailer for \$150 a month, plus tax. The trailer was returned to Pinter on May 19, 1978.

<sup>26</sup> Pinter's tractors are numbered in the order in which they were purchased. Therefore, the tractors leased to Troiano were somewhat newer than those leased to Spector.

<sup>27</sup> This comparison, of course, leaves something to be desired with the difference in time (about a year), the fact that the tractors may be different, and the fact that the record does not reflect the additional charge to the lessee for full maintenance.

On March 3, 1978, Robert and Joe Jr., paid a check to Pinter in the amount of \$3,805, with the notation "Equipment and dock space, January and February." On April 7, 1978, they sent a check to Pinter<sup>34</sup> in the amount of \$4,173; the notation on the stub states: "Equipment, fuel and doors." Robert testified that during this period the number of trailers they rented from Pinter ranged from a low of 1 to 3 to a high of 7 to 12; their business was expanding in this period. There is no evidence that any formal lease or truck rental agreement was executed for the equipment rented by Robert and Joe Jr. for the period November 1977 through March 31, 1978; Robert testified: "I think Mr. Wolters (who was in charge of the Pinter Leasing operation at the time) kept check." Robert testified that he and Joe Jr. (as GLT Transportation) were billed every month or every two during this period, although none of the parties was able to produce any such bills or invoices or truck rental agreements to Robert and Joe Jr.'s GLT.

#### January 25, 1978, Auction

On October 24, 1977, Pinter entered into an agreement with H. J. Gray Corporation (an auctioneer) herein called Gray, providing, *inter alia*, that Pinter would turn over to Gray 39 pieces of power equipment to be sold by Gray at a public auction. Under the terms of this agreement, Gray's commission was 10 percent of gross sales. The notice of the auction listed the sale date as January 25, 1978, the location as the Deer Park terminal and stated that 52 tractors, trucks, and trailers would be for sale. The terms were stated in this notice as: "25% deposit, cash or certified check. Company checks accepted only with blank letter of guarantee, no personal checks accepted." Sometime prior to the execution of this agreement, Joe Sr. informed Robert and Franklin that he decided to auction some of Pinter's rolling stock and they agreed that it was a good idea. They chose the oldest and most abused equipment as the equipment to be auctioned, and Wolters and the Pinter maintenance employees selected the actual equipment to be auctioned; Robert and Franklin also expressed their opinion on what equipment should be chosen for auction.

Prior to the auction, Pinter's maintenance employees were getting the trucks ready for the auction; during this period, Robert spent about an hour a day for 10 to 20 days greasing and oiling the trucks and changing tires. During this period (December 1977 and January 1978), Robert and Joe Jr. approached Gray's representative and informed him that they wanted to bid on some of the equipment at the auction; Gray informed them that they would be best off to have a stand-in at the auction to do their bidding for them, otherwise their presence might drive up the prices on tractors they were bidding for. The individual they used for this purpose was recommended by Gray and was paid by Robert and Joe Jr. He actually appeared at the auction and made bids as he had been previously instructed by Robert and Joe Jr.

At the auction, Robert and Joe Jr., under the name Pin-Bro, purchased eight tractors for a total cost of

\$48,200. Robert and Joe Jr. paid for these purchases by a check payable to Gray dated February 3, 1978, in the amount of \$48,200<sup>35</sup>; they paid no deposit on January 25 and had no letter of guarantee.

When Pin-Bro purchased these eight tractors at the auction on January 25, 1978, four of the tractors were at the Deer Park terminal, while the other four were, at the time, on lease to Spector. In August and September 1977, Pinter Leasing commenced leasing these four tractors to Spector for \$900 per month. Spector did not return these tractors to Pinter until May 1978; when Robert was asked if he and Joe Jr. received any reimbursement from Pinter for the loss of 4 months use of these four tractors of the eight they had purchased at the auction, he testified that Pinter Leasing gave them either a credit for the use of these trucks during this period, or the use of four comparable tractors during this period, because they did not know when Spector would return the four that were on lease. It was not until May 8, 1978 (after Spector returned the four tractors it had been leasing), that Robert and Joe Jr. registered these eight trucks under the Pin-Bro name; prior to that date they were all registered under the Pinter name. Pin-Bro did not obtain insurance for any of these eight tractors until on or about May 1978, and Franklin testified that because these vehicles were the least popular of the tractors leased by Pinter Leasing, Pinter Leasing ceased insuring these eight vehicles among others, in about mid-1977. He also testified that the vehicles that were sold at the auction were not currently registered in New York State. Franklin, however, could not adequately explain how Spector could operate the four leased vehicles in this situation, other than that he recalled that they were to supply their own insurance under the lease (but query, how can you insure unregistered vehicles?).

When Robert and Joe Jr. (as Pin-Bro) took possession of the four available tractors (out of the eight they had purchased) in late January or early February 1978, the license plates had been removed; Joe Jr. went to Pinter's maintenance department where he obtained these license plates and placed them back on the trucks, where they remained until on or about May 1978 when Pin-Bro registered and obtained insurance for all eight tractors. Robert testified that they did this because they were very short of cash at the time and were being quoted high rates for insurance: "And as a result, we took the chance and ran them without it."

Pin-Bro also purchased tractors from others than Pinter. In August 1978, Pin-Bro purchased two tractors from Castle GMC; the sales price for each one was approximately \$28,000. In addition, in June 1978, Pin-Bro purchased three trucks from Universal Ford; their prices were \$28,595, \$26,394, and \$29,315. In June 1978, Pin-Bro also purchased from Husted Chevrolet two automobiles costing \$12,000 as personal vehicles for Robert and Joe Jr.

<sup>34</sup> All these above-mentioned checks were made out to "Pinter Brothers Inc."

<sup>35</sup> This money was obtained from a bank loan from the Long Island Trust Company, the Deer Park branch, which is the bank that Pinter has always used. It is a corporate loan to Pin-Bro, but personally guaranteed by Robert and Joe Jr. with their homes, and more, as collateral.

In March 1979, Troiano purchased five 1974 tractors (Pinter numbers 197 through 201) from Retnip for \$7,500 each, or a total of \$37,500<sup>36</sup> which Franklin testified was the fair market value for the tractors. Troiano paid Retnip for this in two checks; one dated March 23, 1979, and the other dated April 24, 1979. All of these above-mentioned purchases (Castle GMC, Universal Ford, Husted, and Retnip) were financed by the Long Island Trust Company through loans secured by the assets purchased (for which security agreements were signed by Troiano), payable over periods ranging from 26 months to 60 months. The total proceeds of these loans by Long Island Trust Company to Troiano was \$181,000.

#### GLT Transportation to Troiano

Early in 1978, the disagreements between Robert and Joe Jr. on one side, and Mor on the other, began to increase. The major cause of this discontent was the settlement of dollars owed between the parties; Robert and Joe Jr. claimed that Mor was being paid fully for shipments in which they participated and, likewise, Mor claimed that Robert and Joe Jr. were not crediting GLT Transportation of New Jersey for work performed by it. Robert testified that he and Joe Jr. also felt obligated to repay its customers for damages caused by Mor's operations. At that point (about February or March 1978), Robert and Joe Jr. contacted a rights broker to locate a company that had appropriate rights that they could purchase. Robert and Joe Jr. were personal friends of the Troiano family<sup>37</sup> and, in about February or March 1978, they met with members of the Troiano family to discuss the possibility of purchasing the Troiano rights.<sup>38</sup> During the discussions between the parties, Troiano's attorney recommended that Robert and Joe Jr. operate under the Troiano rights for a period of time to prevent any problems with the Interstate Commerce Commission (ICC) due to lack of usage of these rights for almost 2 years. Between April 15 and November 15, 1978, Robert and Joe Jr. operated under the Troiano rights;<sup>39</sup> Troiano was not compensated by Robert and Joe Jr. for the use of these rights during this period. During this period, it was decided that, for a number of reasons, it would be advantageous to purchase the Troiano stock rather than its rights; they would not have to apply to the ICC for a transfer of the rights, and, additionally, they could take advantage of the Troiano tax loss. On November 15, 1978, Robert and Joe Jr. entered into an agreement with Peter and Vito Troiano, providing for the sale of all the stock of Troiano to Robert and Joe Jr. for the sum of \$100,000; the sum of \$30,000 was paid by Robert and Joe Jr. upon execution of the agreement with the remainder to be paid in 36 equal monthly installments (with 8-percent interest) beginning January 1, 1979. A copy of Troiano's ICC right was attached to the agreement.

<sup>36</sup> The December 8, 1978, sale of rolling stock from Pinter to Retnip included these tractors. Their sale price at that time was \$3,026, Pinter's book value for each of them.

<sup>37</sup> Troiano had been out of business since the strike of April 1976.

<sup>38</sup> Robert and Joe Jr. never discussed with Franklin or Joe Sr. the possibility of purchasing Pinter's rights.

<sup>39</sup> The Troiano rights are somewhat more extensive than Pinter's rights.

After the execution of this agreement, the employees of Robert and Joe Jr. (who were paid by check from Pin-Bro beginning in early May 1978) were transferred to their Troiano operation. On April 24, 1978, a corporate resolution was executed under which Joe Jr. (agent), Robert (office manager), and Mary Jane Pinter (secretary) were authorized to sign checks on behalf of Troiano. The bank they used was the Long Island Trust Company.

#### GLT Using Pinter Pros.

On February 15, 1978, Robert and Joe Jr., under their GLT Transportation operation, used two Pinter Pros.<sup>40</sup> The date on each is listed as "2-15-78 JAP" (presumably Joseph A. Pinter, Jr.). Joe Jr. testified that he took these two forms from Pinter without asking anyone's permission and typed them himself because he and Robert had run out of GLT Transportation Pros.<sup>41</sup> As to how long he used these Pinter pros he testified: "I don't know, maybe two or three days, before we got them, either Pros with our address GLT, or we got another carton from GLT in New Jersey."<sup>42</sup> Joe Jr. also testified that he and Robert may have also used Pinter scratch pads and Pinter drivers' manifest (a list of drivers' deliveries) without paying Pinter for their use.

Robert testified that in February or March 1978, he signed a collective-bargaining agreement with Local 88. He did not remember much of the circumstances surrounding this experience,<sup>43</sup> or the later execution of a 3-year collective-bargaining agreement with Local 88 on May 1, 1978, except that this agreement contained the same terms as the agreement executed 2 or 3 months earlier, but substituted Troiano for GLT Transportation.

#### Comparison of Employees

When Robert and Joe Jr. began their GLT Transportation operation, they did most of the driving themselves. Since that time they have expanded their operation to require additional drivers and clerical employees; some of these individuals were previously employed by Pinter. The evidence establishes that in almost every such situation (if not every situation) they were approached by the job applicant (for example, the testimony of Cancellaro, *supra*).

Robert was questioned about 48 named employees who were employed by Robert and Joe Jr.'s GLT Transportation operation and Troiano between November 1977 and October 1980. These employees were em-

<sup>40</sup> A "pro" is similar to a bill of lading. It lists the customer, his address, the goods shipped, the weight, charges, and the method of payment.

<sup>41</sup> These pros are numbered 188230 and 188236. Joe Jr. testified that he had "no idea" if he used the five pros between these two, nor how many Pinter pros he used.

<sup>42</sup> Robert testified that at about this time he and Joe Jr. ordered their own GLT Transportation pros with their Long Island address, because of their difficulty in collecting from shippers who informed them that they paid GLT Transportation in New Jersey. The first of these new pros, however, did not issue until March 23, 1978.

<sup>43</sup> He testified that either Mor informed him of Grossman, the representative of Local 88, or Mor told Grossman to contact Robert and Joe Jr.



ployed in all job classifications, from drivers to clerical employees. Of these 48 individuals, 15 had been employed by Pinter prior to April 1976, and 33 had not.<sup>44</sup>

#### Comparison of Customers

When Robert and Joe Jr. began operating GLT Transportation in November 1977, and later began operating Troiano in April 1978, they (and most especially Joe Jr. who had been in sales at Pinter) used their experience, knowledge, and contacts at Pinter to assist them in obtaining customers in their new endeavors.<sup>45</sup> To do otherwise would be implausible. In this regard, there are in evidence two customer account lists; one is a listing of the customers of Pinter dated June 11, 1976; the other is Troiano's customer listing dated February 15, 1979. As of the earlier date, Pinter listed in excess of 6,500 customers; on the latter date Troiano had only 842 customers listed.<sup>46</sup> Of these 842 Troiano customers, 312 (or 37 percent) were listed as Pinter customers as of June 11, 1976.

#### Troiano and Pinter Work for Newsday

In or about mid-1977 (while he was employed by, and an officer of Pinter), Robert solicited Newsday as a customer for Pinter Warehouse. Newsday was about to move to Melville, Long Island, where they did not have a rail siding; the Pinter Warehouse at the Deer Park terminal did have a rail siding. Newsday had rolls of paper delivered to a rail siding; it was unloaded from the railway car onto a trailer and delivered to Newsday in Melville. The agreement with Newsday was finalized in December 1977, although the first delivery to Newsday, and subsequent billings, did not begin until June 1979. The price originally agreed upon between Pinter Warehouse and Newsday was an all inclusive price which included unloading the rail cars and trucking the paper to Melville. Since GLT Transportation and later Troiano performed the trucking portion of this operation,<sup>47</sup> the fee received from Newsday had to be apportioned among Pinter Warehouse and Troiano. With the excep-

tion of a short period of time, Troiano has performed the trucking portion of this work.

When Troiano began performing this work for Pinter Warehouse they were paid \$50 per trailer load. In February 1980, Pinter Warehouse requested and received a 14-percent increase in its rate to Newsday; at that time Troiano requested an increase, and Franklin increased their rate to \$75 per truck load. Shortly thereafter, Franklin decided that Pinter Warehouse was not earning enough on this Newsday work; he inquired of other truckers who indicated that they would perform the work for less than \$75 per trailer load; when he informed Robert and Joe Jr. of this, they refused to take less than \$75 per trailer load<sup>48</sup> and Franklin took the work from Troiano and gave it to Pinter Warehouse's regular trucker<sup>49</sup> for \$54 per trailer load. Shortly thereafter, Robert and Joe Jr. met with Franklin and they agreed that they would perform this Newsday work for \$60 per trailer load, and, since June 1980, Troiano has performed this work at that rate.<sup>50</sup>

Prior to ceasing operations prior to the strike in April 1976, Pinter operated on a 24-hour-a-day basis on weekdays. Pinter employed approximately 80 drivers,<sup>51</sup> a vast majority of whom worked during a day. At night, other employees loaded and unloaded the trucks. At the Long Island terminal of GLT Transportation and Troiano, the hours of work ranged from between 6 to 8 a.m. until 10 p.m.; drivers do the loading and unloading of their trucks, with the assistance of some part-time employees. At Pinter, Robert drove a truck only a couple of times a month; at the beginning of the GLT Transportation Long Island operation he and Joe Jr. drove every day; at the present time they assist preparing the trucks on a daily basis and drive about half the time. Troiano's rights cover a broader geographic area than Pinter's rights.

#### Analysis

#### The 10(b) Defense

Section 10(b) of the Act provides "that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board . . . ." The earliest charge in this matter was filed on November 6, 1978, approximately a year after Robert and Joe Jr. began the Long Island of GLT Transportation and more than 6 months after they began operating under the Troiano name (but prior to formally purchasing the Troiano stock). Without more, it appears that this action would be barred by Section 10(b). However, the General Counsel sets forth the

<sup>44</sup> In earlier questioning, the General Counsel questioned Robert chronologically (from November 1977 through December 1978) about 16 named employees of GLT Transportation and later Troiano. Of these 16 employees (of all jobs classifications) 11 had been employed by Pinter at one time. Following this, the General Counsel then questioned Robert about all the employees listed on a "paysheet" of Troiano dated October 1, 1980. Of the 31 employees on this list, but not included in the earlier questions of the General Counsel, only 3 had previously been employed by Pinter. Unfortunately, it is not clear whether any or all of those listed on the October 1, 1980, paysheet were employed by Robert and Joe Jr. between November 1977 and December 1978. I therefore can make no finding of the percentage of GLT Transportation and Troiano employees through 1978 who had previously been employed by Pinter.

<sup>45</sup> In the case of Cancellaro, when he was hired by Robert and Joe Jr. in or about January 1978, he reestablished his former relationship with the New Jersey customers he had while he was employed by Pinter prior to April 1976, and acquired them as customers for Robert and Joe Jr.'s operation.

<sup>46</sup> This seems appropriate to the number of drivers employed by Pinter in March 1976 compared with the number of drivers employed by Troiano in February 1979.

<sup>47</sup> Pinter Warehouse employees operate a machine that lifts the 2,000-pound roll of paper from the rail car and places it in a Pinter trailer. Troiano supplies the tractor and the driver and delivers the paper rolls to Melville.

<sup>48</sup> Troiano justified this large increase by the increase in the cost of fuel and the fact that deliveries were then being made during the day, rather than nighttime, requiring them to obtain additional equipment.

<sup>49</sup> Beginning prior to November 1977, and continuing to the present time, Pinter Warehouse has used a local trucker for the transportation of goods from its warehouse to the customer for whom the goods were stored. This individual owned one tractor (the goods were delivered in Pinter trailers) and was not related to the Pinter family.

<sup>50</sup> Franklin testified that he returned the work to Troiano for \$60 per trailer load, \$6 per trailer load more than he was paying the regular Pinter trucker, because that trucker was performing the work at night, and he became unhappy with that arrangement.

<sup>51</sup> At the present time, Troiano employs 11 or 12 drivers.

Board rule that the 6-month period does not begin to run until the aggrieved party has received actual or constructive notice of the conduct constituting the alleged unfair labor practice. Counsel for Respondent Pinter, while acknowledging that the 10(b) period is tolled until the charging party has notice of the acts complained of, alleges that "the record amply demonstrates that Local 807 was on notice some ten months before the filing of the charge."

In *Metromedia, Inc. v. N.L.R.B.*, 586 F.2d 1182 (8th Cir. 1978), the court, affirming the Board, stated that the 6-month limitation period "does not begin to run until the aggrieved party knew or should have known that his statutory rights were violated." The Board, in *Strick Corporation*, 241 NLRB 210, fn. 1 (1979), stated: "[N]otice, whether actual or constructive, must be clear and unequivocal, and that the burden of showing such notice is on the party raising the affirmative defense of Section 10(b)."

I find that the allegations herein are not barred by Section 10(b) for a number of reasons: as stated, *supra*, it is Respondent's burden to establish that Local 807 knew, or should have known, of the existence of GLT Transportation and Troiano earlier than November 6, 1978. An additional factor herein is that since 1976 Pinter had been leasing its tractors and trailers and, in all probability, in some of these situations, the drivers for the lessees were former drivers for Pinter, who were out of work since April 1976 or May 1977. Under these circumstances it was extremely difficult for Local 807 to determine that Robert and Joe Jr. had commenced their own operation.

The strongest evidence for Respondent in this regard is Cancellaro's testimony that he was approached by Spera and Lenihan and asked why he was working for Robert and Joe Jr. This occurred on two occasions, 1 week apart, and, according to Cancellaro's testimony, took place in or about February 1978. However, as clear as this knowledge on the part of Local 807 is, it is in regard to Robert and Joe Jr.'s operation of GLT Transportation, not Troiano, which did not return to operation until 2 months later. This is not helpful to Pinter, Retnip, Pin-Bro, and Troiano because summary judgment was granted as to Respondent GLT Transportation as it did not file an answer herein (nor a 10(b) affirmative defense) nor did it appear at the hearing.

What these respondents must prove herein, to accomplish more than an empty victory, is to establish that Section 10(b) prevents the finding of any violations as to Respondent Troiano. Robert and Joe Jr. began operating under the Troiano name and rights on or about April 15, 1978; the first charge herein was filed on November 6, 1978. Therefore, only the first 3-week period of this Troiano operation is outside the 10(b) period. The only evidence presented of knowledge during this period was Spera's conversation with Rommeney and four other former Pinter employees at the Deer Park terminal who informed Spera that they were working under Troiano rights. However, the date of this conversation is too indefinite to make a finding that it occurred prior to May 6, 1978. Additionally, it is not clear that, at that time, Spera was an agent for Local 807, through whom knowledge could be imputed; he was employed by a dif-

ferent company and it was not established that he was a Local 807 shop steward at the time. I therefore find that Respondents have not sustained the burden of establishing that Section 10(b) is a valid defense to the allegations against any respondent other than GLT Transportation.

#### *Alter-Ego or Successor Status*

An employer who is found to be a successor employer is generally not bound by the terms and provisions of an agreement between the predecessor employer and a union, although there will be an obligation to bargain with the union. *N.L.R.B. v. The William J. Burns International Detective Agency, Inc.*, 406 U.S. 272 (1972). However, an employer who is found to be an *alter ego* of another employer is bound by an agreement between that employer and a union. *N.L.R.B. v. Tricor Products, Inc.*, 636 F.2d 266 (10th Cir. 1980).

In determining whether an *alter ego* relationship exists there are no fixed rules; the Supreme Court stated in *Southport Petroleum Company v. N.L.R.B.*, 315 U.S. 100 (1942): Was there a true change in ownership and management, or "merely a disguised continuance of the old employer." Brought home to the situation herein, the issue is whether Robert and Joe Jr.'s operations (principally Troiano) were "merely a disguised continuance" of the pre-1977 Pinter operation.

The Board set forth basic guidelines in this area in *Crawford Door Sales Company, Inc.*, 226 NLRB 1144 (1976): "Clearly, each case must turn on its own facts, but generally we have found *alter ego* status where the two enterprises have substantially identical management, business purposes, operation, equipment, customers and supervision, as well as ownership." Oftentimes, the Board and courts also look to whether the discontinuance of one, and the creation of the other company, was really a sham performed in order to cease all obligations to the union. *Joe Costa Trucking Company; Edjo, Inc., d/b/a Joe Costa Trucking*, 238 NLRB 1516 (1978); *McDonald's Ready-Mix Concrete and Jim's Ready Mix*, 246 NLRB 152 (1979).

On the basis of all of the above, I find that Troiano is not an *alter ego* of Pinter.<sup>52</sup> Stated simply, I make the finding because of the insufficient connections between the Pinter operation and the Troiano operation.

**Ownership:** Robert and Joe Jr., who owns all of the Troiano stock, were only two of the seven stockholders of Pinter and owned less than 20 percent of the Pinter stock; no other member of the Pinter family, other than Joe Jr.'s wife, Mary Jane, has any ownership interest or office in Troiano.

**Operation:** Pinter was, and Troiano is, primarily LTL (less than truck load) carriers, and both cover approxi-

<sup>52</sup> I make a similar finding as to Retnip and Pin-Bro for much simpler reasons; since its formation in December 1978, Retnip's business (the leasing of tractors and trailers as Pinter Leasing) is substantially different from that of Pinter prior to its shutdown; one was almost entirely a trucking operation while the other is simply a truck leasing operation. Similarly Pin-Bro was formed to hold title to the rolling stock owned by Robert and Joe, Jr.; there is no way to compare it to the Pinter operation prior to the shutdown of operations. As summary judgment was granted regarding GLT Transportation and Moon, they will not be discussed further.

mately the same geographical area, although Troiano's rights are somewhat broader than Pinter's. Troiano's office, and the only location it employs as a terminal, is at the Deer Park terminal; this, of course, was also true of Pinter. However, like other leasees of Pinter, Troiano is allocated office space along with the doors it leases from Pinter, and, as will be discussed, *infra*, the evidence establishes that Troiano was given no preferential treatment regarding these leases. The Troiano operation is only between 10 to 20 percent as large as that of Pinter prior to April 1976. Whereas Pinter employed a strict separation of job classifications, at Troiano, drivers load and unload the trucks, sometimes with the help of part-time employees. While Pinter operated around the clock, Troiano's hours are more limited. Pinter owned its own rolling stock; Troiano leases its trailers. Finally, of the customers of Troiano in February 1979, only 37 percent had been customers of Pinter in early 1976.

**Management and Labor Relations:** The testimony was clear that, at Pinter, Joe Sr. was "the boss." It is also true that he made the major labor relations decisions such as the decision to withdraw from associationwide bargaining and the decision of May 2, 1977, to cease its trucking operation.<sup>53</sup> The testimony was also clear, however, that it was Robert who was responsible for the day-to-day labor relations decisions at Pinter; he had the physical daily presence on the docks, discussed problems with Local 807, represented Pinter during negotiations for a new collective-bargaining agreement to replace the agreement that expired March 31, 1976, and, alone, spoke to the employees on March 31, 1976, about the negotiations. Similarly, at Troiano, Robert was responsible for labor relations decisions while Joe Jr. was in charge of sales, as he had been at Pinter; in this regard, the Pinter and Troiano operation were similar.

**Equipment:** This comparison is difficult because since November 1977 Robert and Joe Jr. have leased rolling stock almost entirely from Pinter, so that it has generally used some of the same equipment that Pinter used, although the truck rental agreements indicate that Troiano generally leased the older equipment. Additionally, in January 1978 and March 1979, Troiano purchased 13 tractors from Pinter in what I find to have been a good-faith arm's-length transaction. Further, in mid-1978, Robert and Joe Jr. (through Pin-Bro) purchased five trucks and two automobiles from automobile dealers. Therefore, at the present time, Troiano is operating these 18 tractors that it owns, and is generally leasing only trailers from Pinter.

**Supervision:** The record testimony is insufficient to determine whether the supervision at Troiano was substantially identical to that at Pinter.

<sup>53</sup> I find that this decision was substantially influenced by Joe Sr.'s ever increasing distaste for Local 807. Admittedly, the arbitration was a factor in his decision; this is well illustrated by his decision to cease trucking operations on the day the three employees returned. Additionally, I find that the Labor Board matter involving Pinter's clerical employees, together with the reluctance of Local 807 to allow Pinter to bargain on an individual basis, also contributed to the decision he made to discontinue the Pinter trucking operation. Of course this, by itself, does not violate the Act. *Textile Workers Union of America v. Darlington Manufacturing Co. et al.*, 380 U.S. 263 (1965).

In addition to the above there were areas of interaction between Robert and Joe Jr. and Pinter that must be examined in determining whether an *alter ego* relationship exists here.

**Equipment Leasing:** It is true that Pinter did not enter into any formal truck rental agreement with Robert and Joe Jr. until 5 months after they commenced the leasing of rolling stock from Pinter; it is also true that Robert and Joe Jr. were quite slow in their payments to Pinter for the leasing of the rolling stock and that on November 30, 1978, they were indebted to Pinter in the amount of \$28,871. However, on the same date, Wilson was indebted to Pinter in the amount of \$30,000. Furthermore, as best as I can determine from the record evidence, Robert and Joe Jr. (as both GLT Transportation and Troiano) received no special treatment in the truck rental rate they paid (for tractors, trucks, and trailers) compared to other comparable customers of Pinter.

**Door Leasing:** As was true for the equipment leasing, Robert and Joe Jr. quickly fell behind in their payments to Pinter Realty for the leasing of doors; by June 1978, when Robert and Joe Jr. sent their first payment of \$2,969 to Pinter Realty since their only other payment (\$400 in December 1977), they were indebted to Pinter Realty in the amount of \$9,500 (if you assume that they leased five doors in January 1978). By late 1978, Troiano was 2 or 3 months behind in its door payments and by December 1979 they were 8 months behind in their payments. In addition, at the time that Troiano paid Pinter \$18,000 in mid-December 1979, they owed an amount of almost \$50,000 for door leasing (if you assume that the door billings from January through July 1979 remained the same through December 1979). Although this is certainly a large debt to be incurred by a customer of only short duration, I have credited Franklin's testimony that other tenants were often months behind in their payments and I therefore will make no positive findings of *alter ego* status based upon this.<sup>54</sup> As was true with its truck leasing operation, Pinter did not grant preferential treatment, overall, to Troiano in its door leasing operation; although Troiano did not pay any security deposit to Pinter, and although its leases did not bind it to a set number or location of doors, its rental fee per door was often from \$5 to \$15 higher per month than other comparable tenants.

**January 25, 1978, Auction:** Any advantages that Robert and Joe Jr. enjoyed regarding the January 25, 1978, auction are so insubstantial to the issue herein as to be barely worth mentioning. Robert assisted in choosing the rolling stock to be auctioned,<sup>55</sup> spent 10 to 20 hours as-

<sup>54</sup> A difficult question, and one that I find unnecessary to decide herein, is: Absent a definitive finding that an operation was closed and a new, and somewhat different, one was commenced to avoid the former employer's obligation to a union, can it be found that the new operation (the sons) is an *alter ego* to the old operation (the father) simply because of substantial preferential treatment given by the father to his sons. I need not decide this issue, because I find insubstantial preferential treatment by Pinter to Troiano and GLT Transportation. But, in such a situation, should a finding of *alter ego* be made simply because a father wished to grant certain favors to his sons that he did not grant his other customers?

<sup>55</sup> As the auction agreement was executed on October 24, 1977, this occurred, in all probability, while he was still employed by, and an officer for, Pinter, and prior to his involvement with GLT Transportation.

sisting Pinter's maintenance employees in preparing the rolling stock for the auction, and he and Joe Jr. had a stand-in bid for them at the auction; although they paid no deposit, as the announcement stated would be required, they paid the full amount (although not by certified check) 9 days later. There being no evidence of any collusion between Robert and Joe Jr. and Gray, these facts are of no assistance to the General Counsel in the findings he desires.

I would also find of little significance the fact that Pin-Bro could not take possession of four of these eight tractors purchased at the auction until May 1978 or that these tractors were not registered or insured until May 1978. In this regard, there is no evidence of any collusion between Robert and Joe Jr. and Pinter in the use of the expired Pinter licenses for these tractors, or the late licensing or insuring of these vehicles. The record of their payments to Pinter during this period supports Robert's testimony that they were short of cash, at the time, and "took the chance."

Additionally elicited by the General Counsel was that for the period October 29, 1977, through January 31, 1978, Robert and Joe Jr. prepared/and or signed 154 truck rental agreements for Pinter. I attach no significance to this as regards the General Counsel's attempt to establish an *alter ego* relationship; prior to that date, Joe Jr. had prepared a vast majority of these agreements; he and Robert knew the customers and assisted Pinter in preparing these agreements, which constituted 40 percent of the truck rental agreements prepared during that period. For the following 9 months the agreements prepared by Robert and Joe Jr. constituted about 2 percent of those prepared. It is not unreasonable to assume that by that time Pinter's employees had acquired enough experience with the operation to perform it without the assistance of Robert and Joe Jr. The fact that they assisted Pinter for this 3-month period has no relationship to an allegation of *alter ego* between them and Pinter.

I also attach little or no significance to the following elicited evidence, and will discuss them no further herein:

(a) The involvement of Robert, Joe Jr., and Franklin in Imperial and the cancellation by Pinter of Imperial's debt to it.

(b) The fact that it was not until 2 months after the resignations of Robert and Joe Jr. that a new corporate bank resolution was instituted for Pinter.

(c) That Robert and Joe Jr. together with their brothers and sister and/or parents are equal shareholders or partners in the family companies, one of which pays dividends.

(d) GLT Transportation's use of Pinter pros in February 1978.

(e) The work performed jointly by Troiano and Pinter for Newsday.<sup>58</sup>

In summary, although I have found that a substantial reason for Joe Sr.'s decision to discontinue Pinter's trucking operation was due to his increasing unhappiness with Local 807, there is no evidence that the entry of Robert and Joe Jr. into their own trucking business was

the finale of the families' orchestrated attempt to rid itself of Local 807. Rather, it seems reasonable to assume that since their family had been in the trucking business all their lives, and they had worked regularly for the business since they were old enough to do so, they wanted to go into the only business they knew—trucking. That their family name worked to their advantage in their dealings with customers and others (such as the Long Island Trust Company in obtaining their numerous loans) does not create an *alter ego*. A finding of *alter ego* status, based on the facts herein, would discriminate against, and severely limit, the occupation individuals could enter, based solely on familial relationships. *United Constructors and Goodwin Construction Company*, 233 NLRB 904 (1977), involved a somewhat analogous situation. Two brothers were equal partners in Goodwin Construction, a general construction company whose employees were represented by a union. These two brothers later established United Construction, also involved in general construction but with no union. United was an equal partnership of the two brothers who created it, together with their five sons. The two reasons for establishing United was to establish a business for their sons, and "that there was a definite market for an open shop contractor . . ." who could bid competitively with nonunion contractors, which Goodwin had been unable to do. Although this would appear to be a stronger candidate for *alter ego* status than Pinter and Troiano, the Board found that Goodwin and United were not *alter egos*.<sup>57</sup>

I would likewise find that Troiano is not a successor of Pinter. It has long been held by the Board that whether a successorship exists turns on whether the former employing enterprise has been substantially continued in existence by the new owner. *Mason City Dressed Beef, Inc.*, 231 NLRB 735 (1977). One important consideration in this is whether a majority of the former employer's employees have been hired by the new employer. *Burns, supra*. The record herein indicates that a majority of the employees hired by Robert and Joe Jr. in their operations had not been previously employed by Pinter; in addition, it appears that there were a number of similarities and differences between their operations and Pinter's operation prior to May 1977. However, I find it unnecessary to discuss these similarities and differences in operation, because in the situation herein, I find that Troiano cannot be a successor to Pinter. Successor cases generally speak of "purchasing" companies or companies assuming the operation of other companies. That is not the situation herein, but rather is more in line with *Co-Op Trucking Company, and C & E Warehouse, Inc., and S & S Trucking Co., a partnership Inc.*, 209 NLRB 829 (1974). Robert and Joe Jr. began their own business; they did not purchase the stock, assets, or rights of Pinter; they leased rolling stock and doors and purchased tractors from Pinter, but at or about the same terms as everybody else. A majority of their customers had never been

<sup>58</sup> *Glengarry Contracting Industries, Inc.*, 258 NLRB 1167 (1981).

<sup>57</sup> In *United Constructors, supra*, as is true herein, United maintained its principal office in the same building as Goodwin, for which it paid rent to Goodwin and leased some of the equipment it required from Goodwin at standard rates.

Pinter customers. Basically, they did what anybody else could have done, and, in this situation, I would find no successorship even if a majority of their employees had been former Pinter employees.

At the hearing, the General Counsel indicated that he might attempt to establish a successorship in another manner, by establishing that Robert and Joe Jr. created the successorship obligation because they refused to hire former Pinter employees, in order to avoid this obligation. If this were so, two violations would be established—a violation of Section 8(a)(3) for purposely refusing to hire former employees of the predecessor who belonged to the union, *Burns, supra*, fn 8; *Howard Johnson Co., Inc. v. Detroit Local Joint Board, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO*, 417 U.S. 249, fn. 8 (1974); *Macomb Block and Supply, Inc.*, 223 NLRB 1285 (1976), and a violation of Section 8(a)(5) by engaging in this activity in order to avoid a successorship obligation, where the other requisite elements of successorship are present, *C.J.B. Industries*, 250 NLRB 1433 (1980). Suffice it to say that there is no record evidence whatsoever to establish either of these violations.

#### CONCLUSIONS OF LAW

1. Respondents Pinter Bros., Inc., Troiano Express Co., Inc., Retnip Corp., and GLT Transportation Lines, Inc., a/k/a Moon Transportation, Inc., are each employers within the meaning of Section 2(2), (6), and (7) of the Act.

2. Pin-Bro Leasing, Inc., is not an employer within the meaning of Section 2(2), (6), and (7) of the Act.

3. Local 807 and Local 88 are each labor organizations within the meaning of Section 2(5) of the Act.

4. Respondents Pinter, Troiano, Retnip, and Pin-Bro have each not engaged in any conduct in violation of the Act as alleged herein.

5. As summary judgment was granted as to Respondent GLT Transportation, said GLT Transportation violated Section 8(a)(1), (2), (3), and (5) by:

(a) Failing and refusing to recognize and bargain with Local 807 in the appropriate unit described below.

(b) Failing and refusing to give effect to the collective-bargaining agreement entered into by Pinter and Local 807, and effective December 6, 1976, through March 31, 1979.

(c) Executing a collective-bargaining agreement with Local 88, on or about February 1, 1977, covering a unit of all employees excluding office clerical employees, guards and supervisors within the meaning of the Act.

(d) Failing and refusing, since on or about November 3, 1977, to recall to employment employees who were laid off by Pinter when it ceased trucking operations on or about May 2, 1977.

6. The appropriate unit referred to above in subparagraph (a) is all tractor trailer drivers, straight truck drivers, hi-lo operators, helpers, platform men, checkers and warehousemen employed by the employer, exclusive of office clerical employees, guards and supervisors as defined in the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that GLT Transportation has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom. In addition, I recommend that GLT Transportation be ordered to take the following affirmative action designed to effectuate the policies of the Act.

(a) Upon request, to recognize and bargain with Local 807 in the appropriate unit described above, and, if a collective-bargaining agreement is reached as a result of said bargaining, to execute the agreement.

(b) To recall to employment employees who were laid off by Pinter when it ceased its trucking operation on or about May 2, 1977. If positions do not exist, said employees are to be offered substantially equivalent jobs, without prejudice to their seniority or other rights and privileges. Additionally, said employees are to be made whole by GLT Transportation for any loss of earnings suffered as a result of the refusal by GLT Transportation to recall them to employment, by payment of a sum equal to what they each would have earned, absent the discrimination, with backpay and interest computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).

Upon the foregoing findings of facts, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>58</sup>

The Respondent, GLT Transportation Lines, Inc., a/k/a Moon Transportation Corp., Jersey City, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to recognize and bargain with Local 807 in the appropriate unit described below.

(b) Failing and refusing to give effect to the collective-bargaining agreement entered into by Pinter and Local 807, and effective December 6, 1976, through March 31, 1979.

(c) Entering into or giving any force or effect to the collective-bargaining agreements executed on February 1, 1977, or thereafter with Local 88, covering a unit of all employees, excluding office clerical employees, guards and supervisors within the meaning of the Act, until said Union has been certified by the National Labor Relations Board as the collective-bargaining representative of said employees.

(d) Failing and refusing to recall to employment employees who were laid off by Pinter when it ceased trucking operations on or about May 2, 1977.

<sup>58</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

The appropriate unit herein, and that which is referred to above in subparagraph (a), is all tractor trailer drivers, straight truck drivers, hi-lo operators, helpers, platform men, checkers and warehousemen employed by the Employer, exclusive of office clerical employees, guards, and supervisors as defined in the Act.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Recognize and, upon request, bargain with Local 807 as the exclusive collective-bargaining representative of its employees in the bargaining unit set forth above, with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody such understanding in a signed agreement.

(b) Recall to employment the employees who were laid off by Pinter when it ceased their trucking operations, and make them whole for any loss they may have suffered, as set forth above in the section entitled "The Remedy."

(c) Post at its Jersey City, New Jersey, location copies of the attached notice marked "Appendix."<sup>59</sup> Copies of said notice, on forms furnished by the Regional Director for Region 29, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the consolidated complaint herein be dismissed insofar as it alleges violations of the Act by Respondents Pinter, Retnip, Pin-Bro, and Troiano.

<sup>59</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT fail or refuse to give effect to the collective-bargaining agreement entered into by Pinter Bros., Inc., and Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, effective December 6, 1976, through March 31, 1979.

WE WILL NOT recognize or enter into any collective-bargaining agreement with Amalgamated Workers Union, Local 88, Retail, Wholesale and Department Store Union, nor give effect to any collective-bargaining agreement we entered into with Local 88 on February 1, 1977, or thereafter, covering a unit of all employees, excluding office clerical employees, guards and supervisors within the meaning of the Act unless and until Local 88 has been certified as the representative of said employees by the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL recognize and, upon request, bargain with Local 807 in the appropriate unit described below, and, if a collective-bargaining agreement is reached as a result of said bargaining, execute said agreement.

WE WILL offer to recall to employment those employees who were laid off by Pinter Bros., Inc., on or about May 2, 1977, when they ceased their trucking operation, and WE WILL make said employees whole, with interest, for any loss they may have suffered because of our earlier failure to offer to recall or reinstate them. The appropriate unit herein is:

All tractor-trailer drivers, straight truck drivers, hi-lo operators, helpers, platform men, checkers and warehousemen exclusive of office clerical employees, guards and supervisors as defined in the Act.

GLT TRANSPORTATION LINES, INC.,  
A/K/A MOON TRANSPORTATION, INC.